

January 20, 1981

LB 245, 452-467

Senator Schmit, I have to close with this, you mentioned surplus of teachers. You had better look at the record today. There is not a surplus, only in a very few fields. In fact, there are shortages developing and by mid 1980's there are going to be very severe shortages for a number of reasons, and the Education Committee does not control the number of people who matriculate in a standing college. That is only controlled by the Regents and you know that. If you want to talk about surpluses, my figures show there are eight hundred and some veterinarians in this state and the veterinarians tell me that is a surplus. So let's get down to the issue. Is it Education or isn't it, and I request that the bill be rereferenced to the Education Committee. Thank you.

CLERK: Mr. President, the motion is that LB 245 be rereferred from the Agriculture and Environment Committee to the Education Committee.

SPEAKER MARVEL: All those in favor of that motion vote aye, opposed vote no. Call the roll, Mr. Clerk.

CLERK: (Roll call vote taken as found on page 287 of the Legislative Journal.)

SPEAKER MARVEL: Legislators, you are still supposed to be in your seats. The Clerk did not announce the vote.

CLERK: 19 ayes, 26 nays, Mr. President, on the motion.

SPEAKER MARVEL: Motion lost. I will raise the Call in just a minute. I want to make an announcement to the Chairmen. If you have hearings that are going to be heard next week, you have to get your notices in today. Okay, the Call is raised.

CLERK: Mr. President, new bills. (Read LB 452-467 by title. See pages 287-291 of the Legislative Journal.)

PRESIDENT: Senator Cullan, Public Health and Welfare Committee, Senator Cullan. Senator Cullan, the Public Health and Welfare Committee will meet at two o'clock. Senator Cullan, do you have a place? I can't get his attention. Senator Cullan, where do you want the meeting? I have already announced it at two o'clock. Do you want it underneath the...? Pardon? The Exec Board will meet in Room 1520 at two o'clock. Okay, 1517 for the Exec Board, two o'clock.

PRESIDENT: Okay, the Clerk will continue to read in bills for about ten minutes and then we will recess until about three-thirty.

February 27, 1981

LB 23, 32, 87, 90, 99,  
111, 128, 166, 175, 180,  
215, 283, 347, 413, 437,  
465, 483

Senator Hefner reports 483 to General File.

Your committee on Ag whose Chairman is Senator Schmit reports 283 be advanced to General File with amendments.

Your committee on Judiciary whose Chairman is Senator Nichol reports 413 to General File with amendments; 32 General File with amendments; 215 General File with amendments; 180 General File; 347 General File with amendments; 111 General File with amendment; 465 General File; 99 General File with amendments; 87 General File with amendments; 23 Indefinitely postponed; 90 Indefinitely postponed; 166 Indefinitely postponed; 175 Indefinitely postponed. (Signed) Senator Nichol, Chair.

Your committee on Urban Affairs whose Chairman is Senator Landis reports 437 to General File with amendments. (Signed) Senator Landis.

Mr. President, LB 128 was introduced by Senator Myron Rumery. (Read title.) The bill was read on January 13 and referred to Retirement for public hearing. It was advanced to General File. I have no amendments on the bill, Mr. President.

SPEAKER MARVEL: Senator Rumery, do you wish to explain the bill?

SENATOR RUMERY: Mr. President, members of the Legislature, if I could have your attention for a few minutes, I would appreciate it. We introduced this bill for these reasons, that should a member of the school employee's retirement system die before retirement, LB 128 would provide an option for the payment of benefits to the spouse of the member, if the spouse is the sole surviving beneficiary. Presently the law provides that if a teacher has twenty years service and is at least 55 years of age or thirty years of service regardless of age and dies before retirement, a monthly annuity for life would be paid the spouse if the spouse is the sole surviving beneficiary in an amount equal to the joint and survivor benefit that would have been paid if the deceased member had retired on the date of death. The joint and survivor benefit is a greatly reduced benefit. The amount of the reduction is determined by the age of the deceased member and the age of the spouse. There are times when the surviving spouse would prefer to have a lump sum benefit rather than a meager monthly payment for life. Often a surviving spouse of a deceased member needs funds for retraining or to enter another job market or to invest in a business that may have some opportunity. LB 128 would give a spouse who is the sole surviving beneficiary

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title). LB 585 offered by Senator Warner. (Read title). LB 586 offered by Senator Wagner. (Read title). LB 587 offered by Senators Kremer, DeCamp, Wagner, Cope and Lamb. (Read title). LB 588 offered by Senator Wagner. (Read title). LB 589 offered by the Banking Committee and signed by its members. (Read title). LB 590 offered by Senators Kilgarin and Beutler. (Read title). LB 591 offered by Senator Landis. (Read title). LB 592 offered by Senator Lamb. (Read title). LB 593 offered by Senators Remmers and Richard Peterson. (Read title). LB 594 offered by Senator Landis. (Read title). LB 595 offered by Senator Fowler. (Read title). LB 596 offered by Senator Nichol. (Read title). LB 597 offered by Senator Nichol. (Read title). LB 598 offered by Senator Nichol. (Read title). LB 599 by Senator Nichol. (Read title). LB 600 by Senator Nichol. (Read title). LB 601 offered by Senator Nichol. (Read title). LB 602 offered by Senator Cullan. (Read title). LB 603 by Senator Cullan. (Read title). LB 604 offered by Senators Cope, Rumery and Fowler. (Read title). LB 605 offered by Senator Koch. (Read title). LB 606 offered by Senator Kremer. (Read title). LB 607 offered by Senator Howard Peterson. (Read title). LB 608 offered by Senator Howard Peterson. (Read title). LB 609 by Senator Marsh. (Read title). LB 610 introduced by Senator Howard Peterson and Senator Heffner. (Read title). LB 611 offered by Senator Kahle. (Read title). LB 612 offered by Senator Pirsch. (Read title). LB 613 offered by Senator Pirsch. (Read title). LB 614 offered by Senator Fowler. (Read title). LB 615 offered by Senator Burrows. (Read title). LB 616 offered by Senator Fenger. (Read title). LB 617 offered by Senator Stoney. (Read title). (See pages 77-88 of the Journal).

Mr. President, I have two new A bills, LB 404A offered by Senator Fowler. (Read title). And LB 604A offered by Senators Cope, Rumery and Fowler. (Read title). (See page 88 of the Journal).

Mr. President, I have a series of items to read into the record. Senator Koch would like to be excused January 7 and 8.

Mr. President, Senator Fowler would like to print amendments to....I am sorry, Senator Pirsch would like to print amendments to LB 465. (See pages 89 through 91 of the Legislative Journal). Senator Fowler to print amendments to LB 458. (See pages 91 through 93 of the Journal). Senator Rumery would like to print amendments to LB 287. (See pages 93 through 94 of the Journal). Senator Newell would like to print amendments to LB 131. (See page 95 of the Journal).

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LB 180, 465

CLERK: Mr. President, LB 180 was a bill introduced by Senators Landis, DeCamp and Fowler. (Read title). The bill was first read on January 14 of last year. It was referred to the Judiciary Committee for public hearing. The bill was advanced to General File. There are no amendments pending at this time, Mr. President.

SPEAKER MARVEL: Senator DeCamp, do you wish to be recognized on the bill? 180.

SENATOR DeCAMP: Why don't we just pass over it.

SPEAKER MARVEL: Do you want it passed over and go down to....

SENATOR DeCAMP: Pardon?

SPEAKER MARVEL: ....the bottom of the heap. Okay, do you want both 180 and 180A? Is there any objection? If not, so ordered. The next item, LB 465, Mr. Clerk.

CLERK: Mr. President, LB 465 introduced by Senator Pirsch. (Read title). The bill was first read on January 20. Referred to the Judiciary Committee for public hearing. The bill was advanced to General File. I have amendments pending by Senator Pirsch, Mr. President, that are found on page 89 of the Legislative Journal.

SPEAKER MARVEL: Senator Pirsch.

SENATOR PIRSCH: Thank you, Mr. Speaker. Members of the body, to fully explain the amendment to LB 465 I will have to give you a little background and explanation of the original bill so you can understand the need for an amendment. I was first made aware of this problem of assaults behind correctional walls from county correctional facility employees and I assumed at first that this was a county corrections problem to be addressed. There are a wide variety of persons being held in the city-county detention facility at any given time and they hold essentially two kinds of status. Those being held prior to trial are those who cannot afford to post bail or who are being held on murder or sexual assault charges and have been denied bail. Then you have the people who are serving a sentence imposed by the court. Now the Jail Standards Board recommends that pretrial and posttrial prisoners be separated, but many of the city-county facilities often do not have the space to do that, and consequently those persons are in close contact with each other which creates a tense society. When an assault is committed in the facility either on another inmate or on a correctional officer, the present course of action is to turn it over to the county or city attorney's office. The assaulted officers do not



appear in court, are not informed about the progress or outcome of the case unless they request it. In records kept for one year by Douglas County, when a person who committed an assault was convicted of the sentence, the sentence imposed resulted in concurrent or in other words no further time being served. Those who were being held in pretrial detention received credit for time already served and they served no extra time even if convicted of another offense, an assault. Those who were serving a sentence received a concurrent sentence and ended up serving no extra time. Lancaster County also had this kind of experience. The effect of this type of sentencing is two-fold. First, the correctional officers are demoralized by the fact that they can be assaulted by the prisoners and the one that assaults them receives no penalty, even though they are convicted by the court essentially there is no further time, there is no penalty. And, secondly, the prisoners who commit the assault are led to believe that they can assault whoever they want and they can get away with it. It means no extra skin off their back. They can get away with it and basically that is what has been happening. Now the original LB 465 dealt with city-county problems only and would have served as a deterrent to the inmates with this attitude and would give the correctional officers a better atmosphere in which to work and restore their confidence in the criminal justice system. At the time of the hearing the Judiciary Committee heard from Pat Rackers, Director of the City of Lincoln Corrections, Joe Vitek with Douglas County Corrections and many county correction officers. And they all testified to this fact. In other words, no additional penalty for additional offenses which is a demoralizing result for correctional guards who receive stitches and broken bones. But to my surprise at this hearing there were state correction officers from the state who I had not had any contact with and they appeared before the committee to testify that this was a state correctional problem also. And in the research in looking through the law books we discovered that in 1978 criminal code revision statutes pertaining to assaults on correctional officers as well as statutes dealing with assaulting, threatening, imprisoning or detaining any persons by an inmate for the purpose of compelling or inducing the performance of any act, were repealed. Although the reasons are not known to me, I possibly assume that it was assumed that the assaults could be handled under the general assault and kidnapping statutes. Until the public hearing at which many state correctional officers testified, I, among others, was not aware that these statutes had been repealed. The evidence brought forward in that testimony proved that the assaults behind correctional walls

in state facilities were not being sufficiently handled under the general assaults statute. It was stated by state and county correctional officers that specific statutes were necessary mandating consecutive sentencing. Now this amendment also adds stiffening of penalties for assault on state and county correctional officers and includes inmates who are assaulted. Added also in this amendment are sections regarding an assault on a peace officer in general when acting in an official capacity. These provisions are similar to statutes which were eliminated again in the 1978 criminal code revision whether by accident or design I have no knowledge. And why should we return these stricken statutes now? A report by the Crime Commission published in 1981 is being distributed or should be distributed to your desk already and I hope that you will have an opportunity to look through that. Through the operation of the Uniform Crime Reporting Program, the Crime Commission became aware of a disturbing increase in the number of assaults on officers during the last three years. I checked that out. The criminal code was revised in '78. The disturbing increase in the number of assaults on officers rose during the last three years. Preliminary UCI statistics showed an increase of 23 percent in assaults from 1979 to 1980 and 77 percent from '78 to '80. For the first three quarters of '80 the Lincoln Police Department received a 79 percent increase in assaults on officers and a 71 percent increase was reported by the Omaha Police Division. In October of 1980 the commission initiated a study to gather more information about the assaults. The study gathered information on 586 assaults on officers and provided the following information. Approximately one-third of the assaults were serious enough to warrant medical services. Agencies reported that 29 percent of the officers assaulted received medical attention. Now assaults are costly to local governments. Law enforcement agencies responding to the survey lost 5,946 man hours at a cost of \$46,434 due to assaults during that three year period. Assaulting an officer or resisting arrest once considered a serious crime is now most often considered a lesser offense. Sixty-four percent of the assaults in the study were requested by the law enforcement agency to be filed as misdemeanors, and when they requested that a felony complaint be filed, felony charges were only filed in 59 percent of the cases. Together there were 532 requests for felony and misdemeanor complaints for assaulting an officer or resisting arrest. Seventy-eight percent of the offenders ended up in court for these offenses and 84 percent of those were found guilty. It is clear that the rate of assaults on law enforcement officers has increased in the last three years while the rate of arrests in Nebraska has decreased.

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So there are two questions in this amendment which replaces the original bill, one, to make mandatory consecutive sentences for those being held behind correctional walls, and also stiffer penalties which were eliminated in the 1978 revision of the criminal code for peace officers who are assaulted in the course of performing their duties. I would hope that you would adopt this amendment and then pass forward LB 465. Thank you.

SPEAKER MARVEL: Senator Higgins.

SENATOR HIGGINS: Mr. Speaker, Senator Pirsch, I have been meaning to get with you before this bill got to the floor. I didn't know it was going to get here this early. Would Senator Pirsch yield to a question? Could I ask you...I see a long list of proponents for the bill. Who was it primarily that asked you to introduce it?

SENATOR PIRSCH: The Douglas County correctional officers, a group from Douglas County corrections.

SENATOR HIGGINS: Which would have been some time last year?

SENATOR PIRSCH: Yes, before the session last year.

SENATOR HIGGINS: I like the bill. I would hope in the next... if it gets to Select File, which I hope it does, I would like to offer an amendment to it. I would also like to state that for background a year ago last December, in other words December of 1980, the Douglas County correctional officers came to me and said, they could not get to the county attorney, they could not get the people that run the corrections department to turn these assaults over for prosecution. So in December of 1980 I went and met with the county attorney and the Director of Douglas County corrections and told them that an officer who got hit in the back of the head with a vacuum cleaner, and they didn't think it was necessary to take that to the county attorney to assault, and we went over a list of assaults that these officers had been getting, and the fact that the inmates went to court and the judge they went to invariably, as Senator Pirsch said, gave them a sentence with credit for time already served and when they went back to a Douglas County corrections jail they laughed at the officers. So I would hope that this bill would be advanced but I would like to also tell Senator Pirsch I was going to introduce a bill myself this year and if you and I get together later, one thing that I would like to address that is not covered in your bill is the fact that when you get into the Nebraska Penitentiary, if



you have somebody doing life and they assault an officer or another inmate, adding anything to their sentence doesn't mean a whole heck of a lot. So I would like to discuss with you perhaps together putting an amendment on that where someone is doing a long term we might consider a sentence of solitary confinement in order to remove them from the rest of prison population, protect the rest of the inmates who are doing their time and behaving and trying to be rehabilitated and at the same time lessen the possibility of officers repeatedly being assaulted by the same criminals because as we all know last June the stabbings that took place some of those men that did the stabbings that wasn't their first attempt to assault an officer. It was a repeated thing. So giving them additional time did not deter them at all. I think we need to go a little bit farther and I hope that you and I could sit down and work out something else to address that problem. I would like to ask all the other Senators to vote to advance Senator Pirsch's bill. Thank you.

SPEAKER MARVEL: Senator Pirsch, do you wish to close on the bill? On your amendment, I'm sorry. Do you want to speak before she...? Okay, the Chair recognizes Senator Chambers to....

SENATOR CHAMBERS: This amendment is found for everybody who is looking for it on page 89. It starts at page 89 on the Journal and runs through the top of page 91. Because the amendment is so extensive and there are so many things in it that I personally am opposed to and I know my opposition is not going to sway anybody, but I have got to have it in the record, I would not support this amendment at all. The enhancement of penalties seems to be the panacea that people in this body think will solve all the problems that exist but that is not going to accomplish a single thing. If the current assault laws are not going to be resorted to by the county attorney, there must be a reason for it. What you are going to have to say is that the county attorney favors assaults in these institutions, therefore, he will not bring a prosecution, so no matter how you draft a bill he is still not going to bring it. But there might be a deeper underlying problem in institutions that a lot of neophytes are totally unaware of and don't care about. Part of that has to do with the undercurrent, let's say the underlying means of controlling these institutions. There are certain people who are allowed to commit assault after assault, even killings in prison, because they are the enforcers for the institution. Some of them are allowed to enter the cells of other inmates and commit homosexual assaults because they are part of the control mechanism in

the institution. Although there are death penalty laws that require a death sentence for an inmate who kills another, you don't find attempts to get the death penalty because you have witnesses who cannot be relied on, their credibility is nothing. And many times the murders are committed by those who work with the administration to control the prison. It is a different world and before we talk merely about the enhancement of penalties, we ought to get an understanding of how these prisons work anyway. You have got an investigation going on at the Penitentiary now because certain officials were trying to make the employees give kickbacks to pay off a judgment rendered against one of those officials, and who cares? Nobody in this legislative body. It is popular and it is easy to say lock them up and throw away the key. It is a lot more difficult to find the cause of the problem. It would be a lot easier to take care of diseases that reach epidemic proportions by simply killing those who have the disease rather than finding out the cause and eradicating that. You are dealing with symptoms here. And as far as all of the solicitude that people think they can show for police officers or peace officers and get everybody to fall in line, when it comes to me, they have made a mistake. There was a recent incident in a housing project in Omaha where one cop shot another one and told a lie, blamed it on somebody and said the person who shot this cop went into a unit next door so that unit was shot into. Women and babies were brought out on the ground and made to lie face down and they were not connected with anything and that is because an officer named Briese lied about the fact that he had shot an officer named Abbott, and the officer that Briese lied to was named O'Connor, and based on Briese's lie O'Connor went next door and shot into that unit where women and children were present and they were having of all things a Bible study. For the state troopers, there was a killing on the highway a couple of years and the trooper lied. He said he had taken hold of a car door, the car lurched, he fell on the ground and when he hit the ground his gun discharged and the individual in the car was struck. I had to do the work that the investigator should have done. I got a copy of the autopsy report and the bullet followed a horizontal path through the young man's head, and when I publicized this the county attorney then took the trooper and gave him a lie test, and on the second go-round he told the truth. He admitted that he did not fall at all and nobody was concerned. People don't know that police officers lie. There are judges and prosecutors who will tell you if it comes down to your word against the cops, we have got to go with the cop even though we know he is lying.

SPEAKER MARVEL: You have 30 seconds left.

SENATOR CHAMBERS: There should not be an enhancement of punishment without studying the entire aspect of the system that you are dealing with. And if I get another opportunity to speak on this, I have more to say.

SPEAKER MARVEL: Senator Higgins and then Senator Beutler.

SENATOR HIGGINS: Mr. Speaker and Senators, I hope you just enjoyed Senator Chambers' speech about the criminal acts that go on in the Penitentiary and how we do nothing to correct it. This is my second session here. My first session last year, I introduced a bill that would punish any correctional officer who committed a homosexual act upon an inmate. Well I asked Senator Chambers' advice on this. I wanted to make it 10 years for a correctional officer who would sexually assault an inmate. Well, I said 5 years for any inmate who sexually assaults another inmate, and Senator Chambers said, that won't fly, Senator Higgins, you make it 4 years for a correctional officer and 2 years for an inmate. So I did, and my bill went before the Judiciary Committee, before Senator Chambers' committee which he is Vice Chairman of. Who do you think made the motion to kill the bill to straighten things out in the prison? Senator Chambers. Now he may come back and say, well, it was poorly drawn. I'll admit the legislative aide that drew it didn't last that long with me. But Senator Chambers has a degree in law. If he was as sincere as he talks, he would have come to me and said, Senator Higgins, you have got a brilliant idea, you have got a good idea, this is the beginning to solve the problem in the prisons, can I help you? Can I amend your bill so that it will fly so it will be legally correct? No, he made the motion to kill it. So this previous speech of his, I just want you to keep this in mind. Thank you.

SPEAKER MARVEL: Senator Beutler and then Senator Vard Johnson.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, a couple of questions of Senator Pirsch, if I may.

SPEAKER MARVEL: Senator Pirsch, do you yield?

SENATOR PIRSCH: Yes.

SENATOR BEUTLER: And excuse me if I wasn't paying enough attention at the beginning of your remarks, but as I understand it that portion of the bill which is the amendment that appears in the Journal which is five-sixths of the bill, or most of the bill, that is your amendment? That is not a



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SENATOR PIRSCH: Right.

SENATOR BEUTLER: And that results from some testimony from some people at the public hearing on the original bill which was a different question. Is that correct? When you were talking about good time and credit and concurrent sentences at the public hearing, that was the published notice?

SENATOR PIRSCH: Right.

SENATOR BEUTLER: Okay, and then some people came in, some correctional officers who thought some additional things should be done and your amendment resulted from that. Is that correct?

SENATOR PIRSCH: They felt they needed the same consecutive sentencing for the state level. And at the time that we researched that, then we discovered that also that was eliminated in the 1978 criminal code. Also in the 1978 criminal code we discovered were these statutes on peace officers who are performing their duty and the Nebraska Crime Commission called it to my attention that the study which showed that in the last three years there had been a rise in assaults on police officers.

SENATOR BEUTLER: Okay, thank you. Mr. Speaker and members of the Legislature, I would strongly recommend that this amendment not be adopted until the Judiciary Committee has had an opportunity to hear both sides of the question. I think what has happened here and I think Senator Pirsch is to be commended for picking up on it, is that certain people have come in and in addition to talking about what was publicized in the public hearings made additional comments on additional things that they thought needed to be done. But by virtue of the situation in which this has arisen, those who are on the other side are those who would have a balanced view. Many, many elements of the criminal justice system did not have an opportunity to comment on these extensive amendments that are now appearing before us today. Now if this were a small matter you might overlook that. But this is not a small matter and the revision of the Nebraska criminal code which took place when Senator Schmit was here and some of the older members of this Legislature, took many, many hours. It was done under Judge Carter of the Supreme Court and a staff of people and then it was done under the law enforcement agency here in this state, basically with some federal funds by an agency that was really promoting the enforcement of law. A great deal of time and thought went into that code, and I think that we owe respect



to prior Legislatures and to the judges that worked on that code at least before we jump in and change a half a dozen provisions in it without a public hearing, that the least we should do is have a public hearing because I suggest to you that we are going to discover when we have a chance to look through these carefully, that there are a number of things that are taken care of or a number of things that were not rightly understood. So I ask you to reject the amendment or if there is some mechanism of getting this back to the Judiciary Committee for a hearing before we adopt it, either that or put it off until next year. Go ahead and adopt the bill in the original form that has had a public hearing, do that much this year and wait for the rest of it next year until we have had a chance to thoughtfully and deliberately review what is being suggested. Thank you.

SPEAKER MARVEL: Before we proceed with the discussion, underneath the south balcony it is my pleasure to introduce on behalf of Senator Nichol, is...Senator Nichol's guest is Robert Simmons, Jr. of Scottsbluff, Nebraska. He is a member of the Board of Regents. Bob, will you move out so we can see you? Okay. Senator Vard Johnson.

SENATOR V. JOHNSON: Mr. Speaker and members of the body, I have to admit that I am very torn by the bill and by the amendment, and I have yet to totally conclude exactly how I want to go on either the bill or the amendment. And the reason I am so torn is this, I think that we in our society today are observing an increase in violent crimes. I don't think society wants and deserves and needs any increase in violent crimes, and I think that we as a society need to take every step we can to continue to protect our societal members from being victimized by violent crimes, and that includes those persons who are working in our penal facilities who have the safekeeping and custody and care of our inmates there. They too need protection from violent crimes. And what Senator Pirsch is attempting to do in this bill is to stiffen our penalties and to at least give our law enforcement officials the assurances, the assurances that if a violent crime on their person is committed, the offender will be punished, the punishment will be a severe punishment and the punishment will serve as a consecutive and not concurrent sentence. And I tend to be very sympathetic with that point of view because I absolutely deplore violent crimes in our midst and I don't care where our midst is whether it be in the penitentiaries, in the jails or on the streets. But you and I, fellow legislators, have a tremendous problem in our society. We have a problem with the way we are treating criminal offenders. Do you realize that this

country incarcerates more people on a per capita basis of all the western nations. There is no other western country that incarcerates more people than does the United States on a per capita basis. We are putting young men and young women in prison after prison after prison. Do you realize that 50 percent of the states in this country are under federal court injunctions right now to relieve overcrowding in the prisons? Half the states are being enjoined by the federal courts to relieve overcrowding in prisons, and so what the states are having to do is they are having to give mass waivers of sentence to inmates to get them back out of prisons. Do you realize in this country we keep people in prisons for a longer period of time than any other western nation does? The average length of time in this country a person will be in our prison is over two years. The average length of time a person will be in prison in the Netherlands is 35 days, and the Netherlands has a far lower incidence of violent crime than does this nation. Do you realize that the Attorney General's recent report on prison overcrowding says that we will have to commit 8 to 10 billion dollars in our national resources to build space to accommodate, to accommodate every inmate under minimal provisions of 60 square feet per inmate. We will have to commit 8 to 10 billion dollars of our money just to keep people in adequate prisons. Do you also realize that the Attorney General's Commission said that only 20 percent of the people in our prisons today are violent offenders? The remaining 80 percent are nonviolent offenders i.e. the burglars, the larcenists, the...I didn't say arsonists, I said the larcenists, the thieves and the like. Most of our prison inmates are non-violent offenders. Now I think what you and I and what society wants is we want to get off our streets the people that will hurt us because I don't want to be around somebody that is going to do me in, that is going to hurt me or my children and you don't either, and those are the people we want off our streets.

SPEAKER MARVEL: You have one minute.

SENATOR V. JOHNSON: I am less concerned about having off our streets in an overcrowded, understaffed facility the burglar and the embezzler and the defrauder and the like. We have got to do better in terms of our criminal justice system. Where we are right now, frankly, is we are a society that tolerates violence by unlimited availability of guns. We are a society that worship violence through our television shows and movies, and we are a society that thinks the only answer, the only answer to our criminal problem is to lock them up and throw away the key. That is not the

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answer. Now I am inclined to support Senator Pirsch's amendment because it at least deals with violent conduct, but I do it with enormous reservations, and the reservation simply is that I think you and I continue to walk down a path that essentially is wrong in society which is to incarcerate everybody who we think commits some offense that is not socially useful. We have got to make changes and we have got to start working on those changes now.



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

SENATOR CHAMBERS: Yes. Mr. Chairman and members of the Legislature, if you turn to page 90 and go down toward the bottom of the page in lines 22 and 23 they are talking about people confined in an institution and if you wrecklessly cause bodily injury to a person or threaten that person the punishment is the same. So what you are telling a person who is locked up that if one of these guys makes you mad enough to threaten him, you ought to go on and hit him. The only time the penalty is different is if you use a deadly weapon. But they are making a threat the same as the actual infliction of bodily injury. Now I wish Senator Johnson would be where he can hear me. He is more careful in his drafting of legislation than that. And as to what Senator Higgins told me about that bill that she bought, I told her the first version was atrocious, but I also told her that she would have a better chance of getting it through the Judiciary Committee if she cut those sentences, but I told her and if she tells the truth and if her memory serves her correct, I told her I am against mandatory sentences and I have fought mandatory sentences except where I am trying to trade it off to get rid of a far worse thing, namely the death penalty. So we need people when they stand on this floor to keep their memory intact and not imply that something is one way when it is another. And if I would try to correct every piece of trash legislation that comes through the Judiciary Committee, then I would be doing the job that this whole legislative body is supposed to do. I fight that stuff in there day after day after day, so all you will see in terms of results by me is on the committee report where I voted against the stuff. I am not going to rewrite every piece of trash legislation that comes through that committee, and it is overburdened with it, and you now are just getting a taste of it, and I think it is the responsibility of everybody to assume some of that burden. But going back to some of this material that you find in here, psychologists have found out that those people who want to punish severely have certain guilt problems within themselves and this was found out during the inquisition especially. The crimes that were punished most severely related to sexual problems and ironically it was members of a church where the people are supposed to be celibate who carried out the inquisition. That is a matter of history. There was an Iowa sheriff at the tail end of last year who told the sheriffs, the deputies, not to arrest anybody for certain crimes because he was overcrowded. He told them, don't arrest them, we don't even have any place to put them. But there

is so much unconcern about the operation of the system that there are members who will say, throw them in jail and let the corrections people worry about it. You help create the conditions that produce violence. You overcrowd. You put incompetent people in as corrections officers. You allow a system to exist where officials in the pen can commit a violation of an inmate's rights, be convicted in a court and then some of you want to say that the state should pay for the judgment against him, and the Attorney General is in favor of that kind of nonsense. So the inmates have an opportunity to see that those who put them in jail do worse things than the thing that they did to get there in the first place, then there are other officials who try to cover for each other official's wrongdoing. This has to be viewed as a seamless web, not a spot here and a spot there, and you pitch and you patch. There has to be a review of the entire system and the mere enhancement of punishments and throwing everybody in jail for a mandatory sentence will not work and one reason the prosecutors do not prosecute is because they have to deal with overcrowded conditions in their county jails. And don't tell me like some of the Senators will flippantly tell reporters that we will raise the money to build more jails because the counties are crying right now about not having enough money to come up to jail standards in their existing jails. The truth is not told. There is a lot of misleading of the public because it sounds good and it makes for votes, but the conditions don't improve. And as for Senator Pirsch's mention of a coincidence of the criminal code being revised three years ago and an increase in assaults on police officers, there has been an increase in all kind of crimes in the last three years because something else coincident with that is the fact that the economy has gone to pot and a lot of people who were looking down their noses at others who had no jobs now find themselves without jobs and they are resorting to things that they condemned in others before.

SPEAKER MARVEL: You have 30 seconds.

SENATOR CHAMBERS: I would rather you were correct when you said 30 minutes.

SPEAKER MARVEL: Sometimes it is not correct.

SENATOR CHAMBERS: Another problem is that a bill like this or an amendment like this allows for additional wrongdoing by corrections people by resorting to selective enforcement. They can get inmates to do what they choose by saying, I will bring the charge against you and I won't bring it against

another. And if you don't believe it, talk to the corrections officers, talk to the new director of corrections who does understand how prisons are controlled. Talk to members of the State Patrol who will be honest with you. Selective enforcement of laws and prisons, selective enforcement of rules are common, and until we go for the whole ball of wax, so to speak, and look at the entire system, this kind of stuff is merely taking coal to Newcastle. It is putting a bit of fire to the tip of the fuse whose other end is in a stick of dynamite. We are not dealing with a problem here. We are making political hay, but I will not be put in that bag. I am going to say and try to do the things that I think this system needs to have done. This is a bad amendment and I think there are provisions in it that even Senator Pirsch will want to take out because she agreed with taking some of this very language out of another bill yesterday.

SPEAKER MARVEL: Senator Beutler, do you wish to speak to the bill, or the amendment?

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, I don't agree with Senator Chambers that this is an effort to make political hay. I think this is a very genuine effort to address a problem. But again I would ask that you delay putting on this amendment until either there has been a public hearing or at a minimum wait until Select File and the additional point I wanted to make is that the amendment itself is not correctly drafted. Subsection one of the amendment says "underscore original section 1", which means they have left into the bill the original section 1 which conflicts with the remaining portion of the amendment. So the bill drafter has made mistakes on this amendment and it is not even possible to read the whole amendment in its entirety and have it make sense. So I think as a minimum at least the drafting errors so the people on the floor of the Legislature can know what this amendment means and says, that those errors should be taken care of before we look at the substance of the amendment. Thank you.

SPEAKER MARVEL: Senator Wagner.

SENATOR WAGNER: Mr. Speaker and members, I will talk more basically to the amendment because I think the amendment is a major amendment to a small bill and really I support the bill but when you come forth with an amendment like this I really think it needs a public hearing and for that reason I certainly couldn't support it. Thank you.

SPEAKER MARVEL: Senator Pirsch, do you wish to close on your amendment?



SENATOR PIRSCH: Yes, thank you, Mr. Speaker. It's times like this when you realize that reinstituting a law which has been on our books for years is what I am trying to do. It makes a good public platform for some Senators to bring charges against all of the liars and the miscreants in the law enforcement system. It is too bad...I hoped that you could see through the smoke, and again I repeat, Senator Chambers called this mandatory sentencing. This is not mandatory sentencing. The original bill said only if a sentence is given of whatever length the judge determines, that it be additional, it not be nonexistent by the fact that there isn't any punishment given at all. Senator Johnson said that 80 percent of our institutions are nonviolent, and I say great and I support work release, I support restitution. I support getting those people out of the penitentiary that do not belong there. But we are talking about assaulters. We are talking about people who are violent, and we are talking about law that has been instituted in Nebraska for years and years and you who were here in 1978 I wonder if you read that criminal code completely through. Did you know...did you read every word, did you know every part that was eliminated from our law at that time? The Judiciary Committee has been constantly fixing up the criminal code revision of 1978 because of flaws and errors and omissions. Now I have only been here for three years, this is my fourth term, but I know on those thick bills very, very few have read them completely through and know...and who can compare them even to what was omitted? I tell you that this is nothing new. We have changed the language to go with our new wording of penalties but it is essentially the same for peace officers performing their duties. And the other has had a public hearing, the mandatory consecutive sentencing and no time given, that has had a public hearing, and at that time it was discovered it was a space problem. Now tell me who else is going to come out and testify on that. This not only has had a public hearing, this has had a public trial during the years that it was in our law in the State of Nebraska. It was taken out in 1978 and since then according to the Nebraska Crime Commission they have been alarmed at the rate of assaults on officers, law enforcement officers, peace officers who are doing their duty since this law that we are talking about was eliminated. I am sure that Senator Higgins who had some suggestions, if the bill drafter....and I apologize that I did not catch the bill drafter's error, will be amendments on Select File, then so be it. By Select File you will have had an even better opportunity to know and to compare this and I can give you the sections of law that were repealed in 1978 that these reinstitute. There is nothing new about this at all except the mandatory consecutive sentencing and no



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credit for time served on assault officers in correctional facilities. And that had a public hearing. I urge that you adopt this amendment and forward LB 465.

SPEAKER MARVEL: The motion is the adoption of the.... Senator Chambers, for what purpose do you arise?

SENATOR CHAMBERS: All rules indicate that a person is entitled to make a reference to something even after closing that is raised in the close which was not discussed in the debate. And my only point is that when I talked about mandatory sentencing, I was referring to a bill that Senator Higgins had raised during her discussion and I think Senator Pirsch misheard me because she was talking to her aide at the time.

SPEAKER MARVEL: Yes, for what....(interruption).

SENATOR HIGGINS: I rise to the rule that Senator Chambers had and state that mandatory sentencing was not something in my memory or his but I have agreed that his memory is impeccable and mine is not. Mandatory sentencing was never brought up to my memory but I yield to the "reverend" Chambers.

SPEAKER MARVEL: The motion is the adoption of the Pirsch amendment. All those in favor of the amendment vote aye, opposed vote no. This is the adoption of the amendment. Have you all voted? Five absent, excused. Clear the board, Mr. Clerk. Shall the House go under Call is the motion. All those in favor of that motion vote aye, opposed vote no. Have you all voted? Okay, record the vote.

CLERK: 25 ayes, 0 nays to go under Call, Mr. President.

SPEAKER MARVEL: The House is under Call. All legislators please return to your seats. Unauthorized personnel please leave the floor. Senator Fenger, will you please register your presence. Senator Burrows, will you please record your presence. Senator Warner, will you please record your presence. Okay. Are all legislators in their seats so we can proceed? Okay, a roll call vote has been requested. We are discussing the Pirsch amendment to LB 465. Call the roll.

CLERK: (Read the roll call vote as found on page 168 of the Legislative Journal). 31 ayes, 12 nays, Mr. President, on adoption of Senator Pirsch's amendment.

SPEAKER MARVEL: The motion is carried. The Legislature

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will be at Ease temporarily. Five minutes.

EASE

CLERK: Mr. President, Senator Wagner and Landis would move to rerefer the amended LB 465 to the Judiciary Committee for a public hearing.

SPEAKER MARVEL: Now we are speaking to that issue and Senator Wesely, do you wish to be recognized? Your light is on. Senator Landis, do you want to proceed?

SENATOR LANDIS: I do, Mr. Speaker. I would like to draw the body's attention to a rule that appears on page 38 and I think underlines an essential practice by giving the Speaker the power to refer a bill back to committee. Of course, this body as a whole has that same power and in discussion with the introducer of the amendment and with the Speaker I volunteered to make this a motion that Senator Wagner and I have co-sponsored asking for a return of the now amended LB 465 for a public hearing. If you will take a look in your green copy, the bill that came out of the Judiciary Committee was of a narrow range talking about the use of good time and consecutive sentences. The amendments we just adopted create four new crimes. In some cases those crimes existed in the previous criminal code three years ago but they certainly weren't in LB 465 and an amendment of that substantive a change should have a public hearing. The precedent for this is common. I would refer most recently to an example just yesterday when Senator Newell offered major amendments to LB 359 on the sanitary improvement district law and rather than asking the body to vote on those amendments on General File, the Urban Affairs Committee volunteered to have a public hearing on those amendments and to refer the issue then back to the body as a whole. It seems to me that if you are going to make substantive changes in law, an essential principle of our procedure is that a public hearing be available for public comment and without prejudicing our intentions on this bill we need to observe that standard. For that reason, I hope the body will refer LB 465 as it is now amended for a public hearing.

SPEAKER MARVEL: Okay, the motion before the House is to refer the bill to the Judiciary Committee. Okay, Senator Wesely, do you wish to be recognized? Your light was on before.

SENATOR WESELY: Yes. Mr. Speaker and members of the Legislature, I would like to stand in support of this motion.

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I think Senator Landis hit it right on the head that our rules do provide for an opportunity to return a bill after significant amendment on the floor to have another public hearing. I think that is in order at this time. The amendment was printed in the Journal but only about two or three days ago and so I think it is important that the public have a chance to respond to these changes. I did support the amendment so I do support the intent of what Senator Pirsch is trying to accomplish, and Senator Higgins. It is just a question of whether or not it should be in order that the public have a chance to review the amendments and speak out on those, and I think it is proper that they do have that opportunity, and would support the motion to return.

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

SENATOR WAGNER: Mr. Speaker, I would like to close whenever it is appropriate.

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

SENATOR PIRSCH: Yes, thank you, Mr. Speaker. Now is the time when you try and decide what is the better part of valor. I do not feel in my own mind that anything at a public hearing would be added. It has been established in our law and at the same time I understand that if you are not on the Judiciary Committee, if you have not dealt and if you also do not want to give law enforcement officers a separate standing, shall we say, because of their job, then I can see where you would be very much for sending this back to committee for a hearing hoping that it will get buried in the deluge of bills that we have before us. I cannot rant and rave and say that this should not be done. If you feel it should...if you feel better about it, then I cannot oppose that. Again I just say that I feel this has been in our law and that it has been thoroughly discussed, not only discussed but used in the State of Nebraska.

SPEAKER MARVEL: Senator Higgins.

SENATOR HIGGINS: Mr. Speaker, I would like to ask Senator Pirsch a question.

SPEAKER MARVEL: Senator Pirsch, do you yield?

SENATOR HIGGINS: Senator Pirsch, was there any discussion



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at all at the public hearing about this...the things contained in this amendment? About correctional officers?

SENATOR PIRSCH: At the public hearing?

SENATOR HIGGINS: Yes.

SENATOR PIRSCH: Only the state and the mandatory consecutive and sentencing parts of assaults behind correctional walls. It was only after that in looking at those statutes that were repealed after that, that we noticed the other statutes were repealed and the Crime Commission called that to my attention.

SENATOR HIGGINS: This was at the public hearing?

SENATOR PIRSCH: That was after the public hearing.

SENATOR HIGGINS: Thank you.

SPEAKER MARVEL: Senator Wagner, you are recognized to close.

SENATOR WAGNER: Mr. Speaker and members, I think we have got a double standard here if we allow this bill to go on like that because in good faith the other day Senator Newell had a bill here...an amendment to a bill that dealt with SIDs and I don't even have an SID in my area and I really, you know, it really didn't make any difference if it was adopted or not but it was the material in there and it was making some major changes and I went to Senator Newell and some of the other Senators here and just indicated my concern and my concern at that time was that I thought it ought to have a public hearing, go back to the committee. Well, I think this bill does too and if we do this to Senator Newell and not to this other one, I think we are setting here a double standard and for that reason I would very much recommend that it goes back to committee. And to Senator Pirsch's comment about hoping to bury the bill, that is not the intent of my thought at all. It is not to hamper the bill or anything, it is whether I agree with the material in that amendment or not. It is just to give it a chance and give it a public hearing. I hope this body would vote along and return this bill for a public hearing. Thank you.

SPEAKER MARVEL: Ready to vote. The motion is to refer the bill to Judiciary. All in favor of that motion vote aye, opposed vote no. Have you all voted? Senator Wagner, what is your pleasure?

SENATOR WAGNER: I would like a Call of the House and a

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roll call vote.

SPEAKER MARVEL: Shall the House go under Call? All those in favor of that motion vote aye, opposed vote no. Record the vote.

CLERK: 26 ayes, 0 nays to go under Call, Mr. President.

SPEAKER MARVEL: The House is under Call. All legislators please return to your seats. Unauthorized personnel please leave the floor. Record your presence. Senator Burrows, will you please record your presence. Senator Newell, will you please record your presence. Senator DeCamp, will you please record your presence. Senator Labedz, will you please record your presence. Mr. Sergeant at Arms, Senator Higgins and Senator Goodrich still unaccounted for. Senator Burrows, your lamp is still red, will you....thank you. Senator Wagner, what is your pleasure? They are all accounted for. There are five absent and two unaccounted for.

SENATOR WAGNER: Which two are unaccounted for?

SPEAKER MARVEL: Sir?

SENATOR WAGNER: Which two are unaccounted for?

SPEAKER MARVEL: Okay, Senator Goodrich now...just one. Senator Higgins, will you....you have. Okay.

SENATOR WAGNER: Go ahead and call the roll.

SPEAKER MARVEL: The motion before the House is to refer the bill to Judiciary. Call the roll.

CLERK: (Read the roll call vote as found on page 169 of the Legislative Journal.) 18 ayes, 21 nays, Mr. President.

SPEAKER MARVEL: The motion loses.

SENATOR CLARK PRESIDING

SENATOR CLARK: The motion is the advance of LB 465. Senator Pirsch, do you want to close on the motion to advance the bill?

SENATOR PIRSCH: Yes.

SENATOR CLARK: I think Senator Chambers had his lights on first. Let's let him talk first and then you can....

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SENATOR PIRSCH: I move, Senator Clark, the passage of LB 465.

SENATOR CLARK: Or go ahead and talk to advance the bill, you are not closing?

SENATOR PIRSCH: No, to E & R Initial. I will shortly have copies of the statutes that were repealed for your information and I have pretty well covered the subject on the amendments, so I will hopefully get that in your hands as soon as possible and close. I urge advancement of LB 465.

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, it might be wise not to advance this bill at this point but I have something specific I will refer your attention to and I am going to read it at this time so it is in the record. On page 90 of the Journal, Section 7, I am going to read a portion of it. "Any person who is legally confined in a jail or correctional or penal institution and intentionally, knowingly, or recklessly causes bodily injury to another person or threatens another in a menacing manner shall be guilty of a Class IV felony." You know what that says, that the crime and the punishment are the same if you threaten someone merely or if you go beyond the threat and bust them on the side of their head with your fist. So they are putting a premium here. It is better to go on and hit them with the fist because if you get angry enough to put your fists up or make a verbal threat, it is the same as if you go on and hit them. This is an example of the kind of legislation that the Legislature wants and I just want it in the record very clearly that I am disassociating myself from all of it, and I think there are provisions in this amendment that are not understood by a lot of people voting on it. And as for whether or not anybody has read all of the revised criminal code, I doubt that the one who asked that question originally has read all parts of the criminal code. I doubt that anybody other than a few who are on the Judiciary Committee read the various rationale behind the accepting of certain provisions in the nature of revising the code. For example, there were too many replications or duplications or heaping up of definitions of the same act and causing it to be considered something different because of the personality of the individual against whom the act was committed. It was felt that a crime is a crime is a crime, that if a certain type of conduct is engaged in it is necessary only for that to be defined one time in the



statute and the law defining it applied to anybody who engages in that kind of conduct, but since a lot of people who are in the Legislature now were not here at the time the code was revised it probably is easy for you to accept the statement of Senator Pirsch who was not here either and admitted it that people didn't know what was in it, they didn't know what they were voting for. They hadn't read this, they hadn't read that. But I did read great portions of it and I had great portions of what was offered as a revision stricken out because I disagreed with it. There were times when I even because I couldn't get my way on specific things made motions to kill the entire code revision. Naturally I failed. But I did succeed in doing a lot of things on that code while it was being discussed. So I did understand what was in it, and I understood what ultimately I was voting for, including the things that I didn't like about it. But because something was in the law 20 years ago and had been there for a thousand years prior to that is no argument for saying, once it was reviewed and found to be wanting it should now be reinstated because at one time it was there. That kind of argument makes no sense to me as an argument justifying a certain kind of conduct. We should look at the merits of what it is we are considering, and if there is a logical, a rational, a justifiable basis for changing the law, then change it. But it should not be a certain group like the corrections people or the county attorneys who can wave a magic wand and say, we want this, we are the upholders and guardians of society and if we tell you something is good, you take it as good and run with it, that should not be. It won't be for me. And probably the easy thing to do would be to just say, well, Senator Pirsch is a nice person and would not intentionally mislead anybody so even though there is language in this bill that she agreed to have stricken from a bill yesterday, let it go anyway. It boggles the mind. And there is a movie...not a movie, but a program on television whose title I think sums up what I have to say, "That's Incredible".

SENATOR CLARK: Senator Beutler. Senator Beutler, did you want to talk on it? The question before the House is the advancement of 465. All those in favor vote aye....did you want to close? All right, go ahead.

SENATOR PIRSCH: Thank you, Senator Clark and other members of the body. The Crime Commission which was one of these proponents does have a varied assortment of people on the commission itself. I hope that you would look at this handout that I gave you. I do not have the statutes but I will see that they will get to your hands, the ones that



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were repealed both on the assaults behind the Nebraska penal correctional walls and also on the peace officer in the performance of their duty and I definitely will expect that on Select File Senator Higgins and I will consult and I would be glad to look at any amendments that Senator Chambers would offer. And I urge you to move this to Select File, and you will have a greater chance at that time to have looked at it and I think that you will see that there will be minor changes and you will vote separately on what Senator Higgins has in mind for an amendment. I urge that you move LB 465.

SENATOR CLARK: The question before the House is the advancement of LB 465 to E & R. All those in favor vote aye. All those opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted? Have you all voted on the advancement of 465? Once more, have you all voted? Senator Pirsch, I am going to have to call the vote.

SENATOR PIRSCH: Yes. I hate to do this, but...pardon?

SENATOR CLARK: Record the vote.

CLERK: 25 ayes, 9 nays on the motion to advance the bill, Mr. President.

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: The bill is advanced. The Clerk has some items on the desk.

CLERK: Mr. President, some items to read in if I may. First of all Senator DeCamp asks unanimous consent to add his name to LB 607 as co-introducer.

SPEAKER MARVEL: No objection, so ordered.

CLERK: Mr. President, your committee on Banking gives notice of hearing for Monday, January 18 and Tuesday, January 19. Signed by Senator DeCamp.

Your committee on Constitutional Revision and Recreation gives notice of hearing for next Friday, and that is offered by Senator Labedz.

Senator Carsten would like to have a meeting of the Revenue Committee today at 1:00 p.m. in Room 1520. Revenue Committee in Room 1520 at one o'clock today.

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LB 32, 198, 215, 264, 274, 274A,  
347, 413, 431, 465, 664, 848-851

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer by Chaplain.

CHAPLAIN PALMER: Prayer offered.

PRESIDENT: Roll call. Senator Fenger, do you want to hit the button so we can get started? Thank you. Now we will start. Record the presence.

CLERK: There is a quorum present, Mr. President.

PRESIDENT: Quorum being present, are there any corrections to the Journal?

CLERK: I have no corrections, Mr. President.

PRESIDENT: The Journal will stand correct as published. Any messages, reports or announcements?

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and reviewed LB 198 and recommend that same be placed on Select File with amendments; LB 274 Select File with amendments; LB 274A Select File with amendments; LB 413 Select File; LB 32 Select File with amendments; LB 215 Select File with amendments; LB 347 Select File with amendments; LB 465 Select File with amendments; LB 264 Select File with amendments; LB 431 Select File with amendments. Those are all signed by Senator Kilgarin, Chair. (See pages 311 through 316 of the Legislative Journal).

Mr. President, I have a Reference Report referring LBs 839 through 847. (See page 316 of the Journal).

Mr. President, communication from the Governor addressed to the Clerk. The Governor has signed LB 664.

PRESIDENT: Ready then for agenda item #4, introduction of new bills, Mr. Clerk. Are there any bills to introduce?

CLERK: Yes, sir, there are.

PRESIDENT: Proceed.

CLERK: Mr. President, new bills. LB 848 offered by the Public Works Committee and signed by its members. (Read title). LB 849 offered by the Public Works Committee and signed by its members. (Read title). LB 850 by the Public Works Committee and signed by its members. (Read title). LB 851 offered by the Public Works Committee and

Captain Svoboda who is the head training officer of the state patrol, the poor little officer caught up in this grinding machine and the county attorney who was the prosecutor. With those five high-powered people with right and justice on their side, they came and brought me before the bar of justice and without me offering a word of testimony, without me offering any evidence, I was acquitted. How can such things be? Because you have people like Senator Hoagland telling you that a high standard of professionalism and proper obedience to the requirements of the rules of evidence are not necessary in the State of Nebraska. Well you have made the bill palatable I presume for everybody. Now the requirement is training for the officer, proper operation of the equipment, it must be tested to be shown to be in working order and even Colonel Kohmetscher can't speak against those things. He might because he doesn't know much but I doubt if he would because the lawyer would tell him, "Uh uh, Colonel, I've got to draw you up short here. If you keep talking like that they will mistake you for the one who cooks chicken rather than the one who runs the state patrol so sit this one out and be cool." So I ask, members of the Legislature, that we take this poor mangled bill and let it limp on its way across the floor and maybe despite the fact that it won't do what I want it to do, which is give the officers a laundry list for obtaining convictions, it will nevertheless point them in the right direction. I thank you.

SPEAKER MARVEL: Okay, the motion before the House is the advancement of the bill. All those in favor of advancing 413 vote aye, opposed vote no. Have you all voted? The motion is the advancement of the bill. Record the vote.

CLERK: 25 ayes, 4 nays, Mr. President, on the motion to advance the bill.

SPEAKER MARVEL: The motion is carried. The bill is advanced. Do you have some items you want to read in?

CLERK: Mr. President, I have notice of hearing offered by the Miscellaneous Subjects Committee and Senator Wagner would like to print amendments to LB 675. And Senator Pirsch would like to print amendments to LB 465 and Senator Labedz print amendments to LB 431. (See pages 430-432 of the Legislative Journal.)

SPEAKER MARVEL: Is Senator Vickers in the room? Are you ready to take up LB 32?

SENATOR VICKERS: Yes, I am, Mr. President.

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LB 127, 270, 359, 378,  
423, 465, 572, 610

SENATOR KILGARIN: I move we advance LB 423.

SENATOR CLARK: The motion is to advance LB 423. All those in favor say aye, opposed. The bill is advanced. LB 192.

SENATOR KILGARIN: I move the E & R amendment to LB 192.

SENATOR CLARK: There are amendments to 192 so we will hold that bill up. 231.

SENATOR KILGARIN: The introducer requests that we pass over 231.

SENATOR CLARK: Well and 304 has amendments so that will complete them. The Clerk wants to read some things in.

CLERK: Mr. President, I have a hearing notice from the Judiciary Committee for February 22, signed by Senator Nichol. I have a hearing notice by the Appropriations Committee for February 2, 3, 5 signed by Senator Warner.

Senator Clark would like to print amendments to LB 127 in the Journal; Senator Howard Peterson and Hefner to print amendments to LB 610. Senator Warner offers proposed rules change. That will be referred to the Rules Committee for public hearing and, Mr. President, Senator Cullan moves to reconsider the body's action in indefinitely postponing LB 270. That will be laid over. (See pages 450-451 of the Legislative Journal.)

Mr. President, in addition to that I have an E & R reports. Your committee on Enrollment and Review respectfully reports that they have carefully examined and reviewed LB 378 and recommend that same be placed on Select File with amendments; LB 359 Select File with amendments and LB 572 Select File with amendments, all signed by Senator Kilgarin as Chair. (See pages 451-455 of the Legislative Journal.)

SENATOR CLARK: I would like to introduce to the Legislature 75 fourth grade students from the Zeman School in Lincoln, Shirley Marsh's District. Bob Larson, Mrs. Soukup, Mrs. Durst and Mrs. Diava (phonetic) are the teachers. Would you stand and be recognized please. Welcome to the Legislature. We are glad to have you here. We will now take up LB 465.

CLERK: Mr. President, there are E & R amendments on LB 465.

SENATOR CLARK: Senator Kilgarin, E & R amendments on 465.

SENATOR KILGARIN: I move the E & R amendments to LB 465.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed nay. The amendments are adopted.

CLERK: Mr. President, Senator Pirsch now would move to amend the bill and her amendment is on page 431 of the Legislative Journal.

SENATOR CLARK: Senator Pirsch.

SENATOR PIRSCH: Thank you. I passed out also on your desks and I believe it was yesterday, we have been waiting for 465 to come up for about four days but it is in your Journal now and these are the amendments that I promised you when it was moved from General File. It simply cleans up the drafters' error that we did not catch and cleans up and makes it clear that we shall not include any credit for time spent in custody prior to sentencing which was also a drafting error. And then because of the debate on General File we did eliminate the "threatens in a menacing manner" from the language in that statute. I believe that that would take any objection from those who felt that threatening was of the same classification of punishment as the actual act of assaulting. I would move the amendments to LB 465.

SENATOR CLARK: Is there any discussion on the Pirsch amendment to 465? Senator Beutler. We have an amendment to your amendment.

CLERK: Mr. President, Senator Beutler would move to amend the Pirsch amendment by adding the following language at the end of Sections 3 & 4. (Read Beutler amendment as found on page 455 of the Legislative Journal.)

SENATOR CLARK: Senator Beutler.

SENATOR BEUTLER: Mr. Speaker and members of the Legislature, this is a clarifying amendment which I think Senator Pirsch agrees to which is designed to take care of one particular situation that could arise but which would not likely arise often. But under Senator Pirsch's amendment time spent in custody would not be counted twice or that is the design of the amendment but it is conceivable that somebody could be in custody for a prior offense and then the time that they were required to spend in jail on that prior offense could come to an end while they were still in custody for an offense under this section, in which case they would not get even a single credit for the time spent in custody which would be contrary to the way we treat all other prisoners. So this is just to clarify that particular situation and as far as I know there is no controversy on it. Thank you.

SENATOR CLARK: Senator Marsh, did you want to talk on the amendment? Senator Pirsch, did you want to talk on the amendment?

SENATOR PIRSCH: Thank you. Senator Beutler and I have discussed this and while it does seem remote I certainly understand his concern and agree with him that we should make it clear and this is just a clarifying statement for this amendment to my amendment and I urge its adoption.

SENATOR CLARK: The question then is the adoption of the Beutler amendment. Did you want to close on that? No closing. All those in favor of that adoption to the amendment vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted? Record the vote.

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of the Beutler amendment.

SENATOR CLARK: The amendment to the amendment is adopted. The next speaker would be Senator Marsh on the amendment as amended.

SENATOR MARSH: Thank you, Mr. Speaker. I do rise to support the amendment as it has been amended and feel that this is an excellent piece now that we have adopted Senator Beutler's addition for that point in clarification and I urge its quick adoption.

SENATOR CLARK: Senator Pirsch, did you wish to close on your amendment?

SENATOR PIRSCH: I'll just say, Mr. Chairman, that I think this will give or show our confidence in our officers who are correction officers behind the walls of our institutions and also our law enforcement officers who risk their lives on the streets and I urge your adoption of this amendment and also the forward advancement of this bill. Thank you.

SENATOR CLARK: The question before the House is the adoption of the Pirsch amendment to 465. All those in favor vote aye, all opposed vote nay. Have you all voted on the adoption of the Pirsch amendment to 465? I guess we're not paying enough attention.

SENATOR PIRSCH: I hope I won't have to ask for a Call of the House.

January 28, 1982

LB 465

SENATOR CLARK: I hope not either. Have you all voted on the adoption of the Pirsch amendment? I can't hold the board open.

SENATOR PIRSCH: I shall ask for a Call of the House then. I'm sorry. Oh, okay.

SENATOR CLARK: Record the vote. Record the vote.

CLERK: 26 ayes, 0 nays, Mr. President, on the adoption of the Pirsch amendment.

SENATOR CLARK: The amendment is adopted. Any further amendments?

CLERK: No, sir. Nothing further on the bill.

SENATOR CLARK: Do you want to move the bill, Senator Pirsch?

SENATOR PIRSCH: I move the advancement of LB 465 as amended.

SENATOR CLARK: You have heard the motion. All those in favor say aye, opposed. The bill is advanced. LB 431.



February 2, 1982

LB 284, 353, 417, 421,  
465, 255A, 702, 801

SENATOR CLARK PRESIDING

SENATOR CLARK: The Legislature will come to order. The prayer by the Chaplain, Reverend Gilbert Visser, Hope Reformed Church.

REV. VISSER: Prayer offered.

SENATOR CLARK: Roll call. Will everyone check in please. Senator Vickers, will you let us know you are here please. The Clerk will record the attendance.

CLERK: There is a quorum present, Mr. President.

SENATOR CLARK: We are ready for item #3, messages, reports or announcements.

CLERK: Mr. President, your committee on Business and Labor whose chairman is Senator Barrett to whom was referred LB 801 instructs me to report the same back to the Legislature with the recommendation it be advanced to General File. That is signed by Senator Barrett.

Your committee on Banking, Commerce and Insurance whose chairman is Senator DeCamp reports LB 702 advanced to General File with committee amendments attached. Mr. President, your committee on Enrollment and Review respectfully reports they have carefully examined and engrossed LB 353 and find the same correctly engrossed; 417 correctly engrossed; 421 correctly engrossed; 465 correctly engrossed, all signed by Senator Kilgarin as Chair.

Mr. President, I have a report to the Legislature from the Lewis and Clark Natural Resource District regarding payment of attorney fees and I have an Attorney General's opinion addressed to Senator DeCamp regarding LB 284 passed last session. That will be inserted in the Journal. (See pages 502-504 of the Legislative Journal.)

SENATOR CLARK: We are ready for item #4, LB 255 by Senator Wagner. The Clerk will read.

SENATOR WAGNER: Mr. Speaker, members, this is the A bill that went with 255. It hadn't got on the floor when we moved 255 so it is just the A bill to it so I just move the advancement of it so it can catch up with the other bill on Select File.

SENATOR CLARK: Is there any discussion on 255A? If not, all those in favor vote aye, opposed vote nay. Senator VonMinden, did you want to say something?

February 11, 1982

LB 139, 417, 421, 465

SPEAKER MARVEL: The motion is carried. The amendment is adopted. All those in favor of returning the bill say aye. Opposed no. The motion is carried. The bill is returned. LB 421. The Clerk will read.

CLERK: Mr. President, I have a motion from Senator Schmit to return the bill but he is excused until he arrives. I have two motions from Senator Schmit.

SPEAKER MARVEL: Is there any one in the room that can handle these amendments? This specific one? Senator Cullan, do you wish to speak? We eventually are going to have to lay over the bill.

SENATOR CULLAN: Mr. President, I think it would be wise to lay this over until Senator Schmit arrives or until a later date. I would advise the body that I have requested an Attorney General's Opinion about the amendments which Senator Schmit requests to strike and I have not yet received a response to that Attorney General's Opinion, and I have also written Blue Cross-Blue Shield a letter requesting other information about the bill. So I think it would be premature to act on the bill or on these amendments until we have the Attorney General's Opinion. So I would think it would be prudent to at least lay over the bill until Senator Schmit arrives or until another day.

SPEAKER MARVEL: Okay, the bill will be laid over. We will go on to LB 465.

CLERK: (Read LB 465 on Final Reading).

SPEAKER MARVEL: All provisions of law having been complied with, the question is, shall the bill pass? Those in favor vote aye, opposed vote no. Have you all voted? Have you all voted? LB 465. Record the vote, Mr. Clerk.

CLERK: (Read the record vote as found on pages 649 and 650 of the Legislative Journal). 44 ayes, 0 nays, Mr. President, and 2 excused and not voting.

SPEAKER MARVEL: The motion is carried and the bill is passed.

CLERK: Yes, sir. Mr. President, I have a motion on LB 139. Senator Marsh would move to return LB 139 to Select File for a specific amendment. Her amendment is found on page 590 of the Legislative Journal.

February 16, 1982

LB 192, 198, 231, 239,  
263, 370, 448, 450,  
465, 511, 592

Mr. President, Senator Barrett would like to have an executive session of the Business and Labor Committee tomorrow at ten-thirty, is that right, Senator, ten-thirty in the West Lounge. That is tomorrow morning, Business and Labor Committee.

Mr. President, Senator Duda asks unanimous consent to be excused all day February 17.

Mr. President, I have Legislative Bills passed on Final Reading ready for your signature.

PRESIDENT: While the Legislature is in session and capable of doing business, I propose to sign and I do sign LB 592, 511, 448, 370, 263, 239, 231, 198, 192, 450 and LB 465. We have one more guest that we would like to introduce. I believe he is under the North balcony, here as a guest of Senator Kremer, Mr. John Harris from Aurora. He has filed for the Legislature from the 34th District. Would Mr. Harris stand up and be recognized. Welcome to your Unicameral, Mr. Harris. And now the Chair recognizes the Honorable Senator Nichol from Scottsbluff, Nebraska.

SENATOR NICHOL: Mr. Chairman, members of the Legislature, I want you to know that western Nebraska is still in great shape. Since it is Valentines Day just past and you need a little sweetening up, I heard a few remarks while out west over the weekend and so I thought I would sweeten you up a little today. There is some sugar from the Great Western Sugar Company up in front of the podium and I would ask that you would please take a bag for yourself. I would like to take the credit for buying this but I didn't buy it. It was given to me to give to you, and in spite of what Senator Dick Peterson says, why it is still a good food to eat and if he wants equal time that is fine but I thought I would return good for evil and bring you a little sugar this morning. Thank you.

PRESIDENT: Thank you, Senator Nichol. Did Senator Richard Peterson have something to add or another point? Senator Peterson.

SENATOR R. PETERSON: Yes, Mr. Speaker, fellow colleagues, I would encourage my fellow colleagues to hands off all the sugar that is up there and you know the dentist and that are saying...I don't know, maybe Senator Nichol is being paid off by the dentist because you know this is bad for your teeth, so for gosh sakes go to honey.

LR 211, 224  
LB 131, 192, 198, 211, 224, 231,  
239, 263, 270, 274, 274A, 287,  
314, 402, 440, 448, 450, 454,  
465, 511, 547, 589, 592, 634,  
646, 649, 669A, 672, 827

February 22, 1982

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: The prayer will be delivered by the Reverend Palmer.

REVEREND PALMER: Prayer offered.

SPEAKER MARVEL: Record your presence, please. While we are waiting for a quorum, underneath the South balcony from Scottsbluff, Nebraska, Audrey Towater is the guest of Senator Nichol. She is the one that has that large object there she is working on. I suggest that at your convenience you take a look at it. It is very interesting. Record, Mr. Clerk.

CLERK: There is a quorum present, Mr. President.

SPEAKER MARVEL: The Clerk has got some items to read into the Journal.

CLERK: Mr. President, your committee on Enrollment and Review respectfully reports we have carefully examined and reviewed LB 634 and recommend that same be placed on Select File with amendments; 672 Select File with amendments and LB 827 Select File and 669A Select File, all signed by Senator Kilgarin. (See pages 790-791 of the Journal.)

Your Enrolling Clerk respectfully reports that she has presented to the Governor on February 19 at two-fifty, bills passed on Final Reading that day. (Re: LB 131, 274, 274A, 287, 314, 402, 440, 454 and 589.)

Mr. President, I have communications from the Governor. The first is addressed to the Clerk. (Read communication re: LB 239 as found on page 791 of the Legislative Journal.) The second communication is addressed to the Clerk. (Read re: LB 192, 198, 231, 263, 270, 448, 450, 465, 511, 592, 131, 274, 274A, 287, 314, 402, 454 and 589.)

Mr. President, your committee on Urban Affairs whose chairman is Senator Landis reports LB 904 as indefinitely postponed. That is signed by Senator Landis as Chair.

Senator Schmit would like to print amendments to LB 547 in the Legislative Journal. (See page 792 of the Journal.)

Mr. President, LR 211, 224 and LB 646 and 649 are ready for your signatures.

SPEAKER MARVEL: While the Legislature is in session and capable of transacting business I am about to sign and do sign LR 211, LR 224, engrossed LB 646, LB 649. (See page