

January 18, 1982

LR 199

LB 473, 550, 738, 853-873

on the resolution. I will not support the resolution as it is now, and I am sure that the people I represent will understand. Thank you.

PRESIDENT: All right, seeing nothing further, that is the closing on the resolution as amended. All those in favor of adopting LR 199 as amended vote aye, opposed nay. Have you all voted? Record the vote.

CLERK: 32 ayes, 3 nays, Mr. President, on adoption of the amended resolution.

PRESIDENT: The motion carries. LR 199 is adopted. Let me first of all introduce some very special friends of Senator Kremer over here under the north balcony, Mr. and Mrs. Dennis Eberspacher. Would they stand up and be recognized, and welcome to the Eberspachers to the Unicameral. All right, Senator Kahle, thank you. The Call is raised. Read some matters in, Mr. Clerk, if you will.

CLERK: Mr. President, your committee on Public Works whose Chairman is Senator Kremer reports LB 473 as indefinitely postponed and LB 550 as indefinitely postponed. Both signed by Senator Kremer as Chair.

Senator DeCamp would like to print amendments to LB 738 in the Journal, Mr. President. (See pages 320 and 321 of the Journal).

Mr. President, I have a report from the Agriculture and Environment Committee reporting on confirmation hearing. (See page 321 of the Journal).

Mr. President, new bills. LB 853 offered by Senator Fowler. (Read title). LB 854 by Senator Fowler. (Read title). LB 855 offered by Senator Fowler. (Read title). LB 856 offered by Senator Fowler. (Read title). LB 857 offered by Senator Fowler. (Read title). LB 858 by Senator Marsh. (Read title). LB 859 by Senator Marsh. (Read title). LB 860 offered by Senator Nichol. (Read title). LB 861 by Senator Nichol. (Read title). LB 862 offered by Senator Beutler. (Read title). LB 863 by Senator Landis. (Read title). LB 864 offered by Senator Hefner and Howard Peterson. (Read title). LB 865 by Senator Goodrich. (Read title). LB 866 by Senator Goodrich. (Read title). LB 867 by Senator Goodrich. (Read title). LB 868 by Senator Fender. (Read title). LB 869 by Senator Stoney. (Read title). LB 870 by Senator Stoney. (Read title). LB 871 by the Government Committee. (Read title). LB 872 by Senator Wiitala. (Read title). LB 873

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LB 372, 546, 567, 676,  
LB 590, 590A, 818, 870, 948

Senator Vickers. Okay, the Clerk will call the roll.

CLERK: (Read roll call vote as found on page 906 of the Legislative Journal.) 19 ayes, 22 nays, Mr. President.

SPEAKER MARVEL: The motion lost. The motion is to advance the bill. The motion is to advance the bill. A machine vote is requested. All those in favor of advancing the bill vote aye, opposed vote no. A record vote has also been requested. Record.

CLERK: A record vote by Senator Haberman, Mr. President. (Read record vote as found on page 907 of the Legislative Journal.) 25 ayes, 17 nays, Mr. President, on the motion to advance the bill.

SPEAKER MARVEL: The motion carried. Okay we've got 590A. We've got a couple of other items and then we've got a couple of announcements to make.

CLERK: Mr. President, 590A. I have no amendments. Senator Haberman has a motion to indefinitely postpone the bill, Mr. President.

SENATOR HABERMAN: Mr. President, I will withdraw that motion but I will ask for a roll call record vote on advancing the A bill.

SPEAKER MARVEL: Do you want a roll call vote or a record vote? All those in favor vote aye, opposed vote no. Have you all voted? The motion is to advance the A bill. Have you all voted? Have you all voted? Well you can try it. Have you all voted? Okay, record the vote.

CLERK: (Read record vote as found on pages 907-908 of the Legislative Journal.) 25 ayes, 20 nays, Mr. President, on the motion to advance the A bill.

SPEAKER MARVEL: The motion carried. Okay, the Clerk has got some items to read in.

CLERK: Public Health and Welfare gives notice of hearing on gubernatorial appointments. The Appropriations Committee advises the body that they have scheduled...will conduct their hearings this week in Room 1520 as opposed to 1003.

Your committee on Judiciary reports LB 372 advanced to General File; 567 General File; 870 General File; 546 General File with amendments; 676 General File with amendments; 818 General File with amendments; 948 General File with amendments, signed by Senator Nichol. (See pages 908-910 of the Journal.)

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LR 237  
LB 816, 817, 870, 956

aye, opposed vote nay. Have you all voted? Once more, have you all voted? Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman, though I am within striking distance, I am too proud to beg. You can record the vote.

SENATOR CLARK: Record the vote.

CLERK: 20 ayes, 12 nays, Mr. President, on adoption of Senator Chambers' amendment.

SENATOR CLARK: The motion fails. We are back on the original amendment. There is nothing else on the amendment. Senator DeCamp.

SENATOR DeCAMP: Let it rip.

SENATOR CLARK: The question before the House is the adoption of the resolution. All those in favor vote aye, opposed vote nay. A record vote has been requested. Senator Clark voting aye.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Record the vote.

CLERK: (Read the record vote as found on pages 1045 and 1046 of the Legislative Journal.) 33 ayes, 9 nays, Mr. President, on the motion to adopt the resolution.

SENATOR CLARK: The motion carried and the resolution is adopted. We will now go to item #5. Do you have anything to read in, Mr. Clerk? All right, go ahead.

CLERK: Mr. President, Senator DeCamp would like to print amendments to LB 870. Mr. President, Senator DeCamp would like to print amendments to LB 816. (See pages 1042 through 1044 of the Legislative Journal.) And your committee on Government, Military and Veterans Affairs whose Chairman is Senator Kahle instructs me to report LB 956 advanced to General File with committee amendments attached. (See page 1046 of the Journal.) And, Mr. President, your committee on Public Health gives notice of hearing for gubernatorial appointment hearings. (See page 1046 of the Journal.)

SENATOR CLARK: We will now go to item #5 and we will take up LB 817.

CLERK: Mr. President, LB 817 was a bill introduced by

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LB 824, 547, 870

CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted? Once more, have you all voted? Senator Labedz.

SENATOR LABEDZ: Mr. President, I will take call ins and I will have a Call of the House.

SENATOR CLARK: A Call of the House has been requested. All those in favor of a Call vote aye, opposed vote nay. Record the vote.

CLERK: 23 ayes, 0 nays to go under Call, Mr. President.

SENATOR CLARK: The House is under Call. All Senators will return to their desks and check in please. Mr. Sergeant at Arms, will you get them all back to their desks? She says she will take call ins.

CLERK: Senator Nichol voting yes.

SENATOR CLARK: We have not all checked in. Senator Schmit, will you check in please? Senator Kilgarin. We are just short one.

CLERK: Senator Kahle voting yes.

SENATOR CLARK: Record the vote.

CLERK: 30 ayes, 10 nays, Mr. President, on the motion to raise the bill.

SENATOR CLARK: The bill is on General File notwithstanding the action of the committee. This is not a record vote. We will now go to item #6, LB 870. The Clerk would like to read in.

CLERK: Mr. President, Senator Chambers would like to print amendments to LB 547 in the Legislative Journal.

Mr. President, Senator Goll would like to be excused Monday, March 15.

SENATOR CLARK: No objections, so ordered.

CLERK: Senator Koch would like to print amendments to LB 824.

SENATOR CLARK: We are ready for 870.

CLERK: Mr. President, LB 870 was a bill introduced by Senator

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LB 870

Stoney. (Read title.) The bill was read on January 18. It was referred to the Judiciary Committee for public hearing, Mr. President. The bill was advanced to General File. I have a series of amendments to the bill, Mr. President.

SENATOR CLARK: All right, Senator Stoney, you go ahead and explain the bill and then we have a series of amendments.

SENATOR STONEY: Thank you. Mr. President, members of the Legislature, you will recall yesterday we debated LB 568 which dealt with this issue, the issue of driving while under the influence of alcohol.

SENATOR CLARK: Can you hear anything, Senator Stoney? I can't.

SENATOR STONEY: Pardon me, I can't hear you.

SENATOR CLARK: Can you hear anything? The decorum in here is absolutely lousy. You are all talking at the same time in a tone that is just very disturbing to the Speaker. Please hold it down. Go ahead, Senator Stoney.

SENATOR STONEY: Thank you, Mr. President. To continue, LB 870 is a bill to deal with the issue of those who drive while under the influence of alcohol. We spent considerable time yesterday on LB 568. I would just like to spend some time today to highlight this issue, to properly frame this issue, and explain the difference between the two propositions. I think that both attempt to address the issue of driving while intoxicated. They use divergent ways, however, to accomplish that final purpose. As I mentioned yesterday in opposing the advancement of LB 568, the way that LB 870 would attempt to address the problem is through mandatory jail sentences and also fines. Now the reason that this is important is, ladies and gentlemen, that this proposal as compared to 568 does limit judicial discretion, and I think that there are some positive reasons why such a proposal should be adopted. I don't know whether or not all of you have of recent date considered the seriousness of this problem. Drunk driving is the nation's number one highway safety problem. It is not just a problem in the metropolitan city here in Nebraska but it is a problem in our state, it is a problem nationwide, and it is a problem worldwide to be quite frank. In 1981 46% of Nebraska's fatal accidents involved alcohol, and in the United States in the same year, roughly one-half of all auto deaths were due to drunk driving. Now when you refer to accidents involving motorcycles, that percentage increases to 60%. Nationally on weekend evenings,

one out of ten drivers is legally drunk, yet only one out of two thousand drunk drivers is caught. I think it is interesting to note that more Americans died on the highways in one year than lost their lives in Vietnam, and many of these deaths will be avoidable if we can keep those individuals who are intoxicated from behind the wheels of automobiles. 250,000 Americans were killed in alcohol related auto crashes in the 1970s. This means that 70 Americans lose their lives daily due to drunk driving accidents. Some people are concerned as well with the economic or the monetary impact that it has on our nation. The drinking driver problem creates an estimated economic cost of over \$5 billion annually. Each single fatality on our nation's highways constitutes an economic loss of approximately \$150,000 per each accident; and for Americans under age 35, and we have a few members in the body that would qualify, this is the number one cause of death, it is motor vehicle accidents. One out of every two Americans will be involved in an alcohol related auto crash in his or her lifetime. Now of a 135 fatal accidents involving a drinking driver in Nebraska in 1980, only two of the drivers went to trial, and in both cases, the juries found the drivers innocent. In 85 of the 134 accidents, which is 63%, the drinking driver was killed, and in 7 of the 85 accidents, another driver or a passenger also was killed, but typically no other car was involved. Now you have read a great deal in the news media, you have heard a great deal on the media of radio and seen on television that the State of California just this year passed a comprehensive law to deal with this particular issue. There have been a number of editorials that have appeared. I won't take the time to refer to those but would say that LB 870 encompasses the principles which are incorporated in the new law in California. Now they had a reduction in automobile deaths the first weekend that this bill was in place in the State of California. Their deaths dropped from 47 to 27 which was the lowest in 20 years in the State of California, and the reasons given for this is that this new law was in place and, additionally, there are people in our nation who are becoming concerned, who are forming groups to address this serious societal problem. Two of those groups are Mothers Against Drunk Drivers and Remove Intoxicated Drivers, the MADD group and the RID group. Now they feel that with the impact of these two groups in going to Legislatures such as ours and expressing their concerns, as well as laws being passed such as this, they are beginning to address the problem. I received a copy of two items that I would like to refer to just briefly that appeared in newspapers here in the State of Nebraska that I think address some of the questions that will come about on this particular subject. One of the items comes from the Chief

of Police in North Platte, Police Chief Gutschenritter, and he says, "The Nebraska Legislature is currently considering legislation which would require mandatory jail sentences for anyone convicted of driving while under the influence of alcohol. In my opinion, this legislation is long overdue. It is sorely needed, will be a positive step in reducing the number of senseless murders caused by drunks while operating a motor vehicle." He goes on to say, because there has been expressed concern by some of my colleagues with reference to officers being reluctant to make arrests if such a punitive law were adopted, he says, and I quote, "I believe I can speak for the majority of law enforcement officers when I say that absolutely nothing could be further from the truth. If there is any reluctance today on the part of law enforcement officers in making drunk driving arrests, it is knowing that the drunk driver now arrested, if tried and convicted, will often receive probation, and in knowing the drunk driver will often be released from custody before the officer ever completes his report." I also found a graphic example in a testimony from an ex-drunk which appeared in the Grand Island Independent. I would like to share that with you. This gentleman says, and I quote, "I believe I am qualified to speak on this subject because I was a drunk driver from age 16 to 36. I was arrested 7 times during this period for DWI. I wrecked every car I ever owned and several that I didn't own due to DWI." He said, "I don't believe I ever killed anyone in these wrecks but I put some people in the hospital and I drove some mothers nearly crazy. I drove cars while drunk both with and without the driver's license. I have never been convicted in a court of law of DWI. In fact, I have never been before a judge on a DWI charge. I have always had a lawyer plea bargain the charges down to reckless or careless driving." He says, "I quit drinking alcohol over ten years ago, but not because of DWI problems, because of job, family problems caused by my drinking. My DWIs were never a problem to me as long as I could get the charges reduced and didn't have to go to jail. I refused to take blood alcohol tests because I knew that if the DWI charges were not reduced, I would go for a jury trial and no jury of 'good old boys' would convict another 'good old boy' for having a couple of drinks and then driving and I always believed that prominent people and people with money would never face DWI charges under the present law."

SENATOR CLARK: You have one minute.

SENATOR STONEY: Well, he continues with that, ladies and gentlemen. I do think that we should give serious consideration to stiffening the penalties in the State of Nebraska to deal with this particular issue and I have circulated and

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you have on your desks an amendment to LB 870 in its original form, it is Request #2788, which does not impact at all the intent of the proposal but merely attempts to address some of the problems that were written into the original proposal. I have also circulated a sheet, it is a two page sheet, entitled LB 870 Relating To Drinking And Driving which will give you the various provisions in the two classifications, those not involving bodily injury and those that do, which would show penalties in each of the offenses beginning with the (interruption)...

SENATOR CLARK: Senator Stoney, are you taking up your amendment now?

SENATOR STONEY: Yes, I will.

SENATOR CLARK: All right, you have the first amendment up.

SENATOR STONEY: Thank you. Ladies and gentlemen, if you will refer to the material that I circulated, it is entitled LB 870 Relating To Drinking And Driving. It is also in the complete form, Request #2788. I will explain what these amendments accomplish which were not in the original draft of 870. LB 870 makes several changes in the language of the bill but it does not detract from the major purpose of the bill, and that as I mentioned earlier is mandatory jail sentences, license, restitutions, limiting of plea bargaining, and judicial discretion, limiting the use of probation and pretrial diversion, and the imposition of stiffer fines, jail provisions and license revocation. As introduced, LB 870 proposed stiffer penalties for accidents arising from DWI which involve bodily injury or death but I have amended that so that it removes references to death while retaining references to bodily injury, that reason being that the present law in the State of Nebraska was more punitive than what was being asked of in LB 870. Thus, if deaths which occur as a result of DWI, they would continue to be prosecuted as motor vehicle homicide as the present statutes provide. The amendment also opposes or imposes the same penalties as established by the bill for convictions of the offenses identified in the bill to convictions arising from Nebraska's implied consent law. Thus, an individual cannot escape penalties established by this bill if it were enacted simply by refusing to take the blood alcohol test. The bill as introduced would have allowed for impoundment. That has been removed. Under current statutes, the municipal courts would not have the authority to include a jail sentence as a condition of probation. As amended, it would impose a minimum...or rather the bill if enacted would impose a minimum imprisonment of 48 hours and with the amendment



it would grant the municipal courts the same opportunity and the power to include the jail sentence for DWI as a term of probation. Now, finally, the amendment strikes reference to Certified Alcohol Treatment Programs for Driver's Training Courses because in present statute there seems to be a question as to whether or not those are defined properly. This amendment would allow any alcohol or drug or Driver's Training Program to be used and the information that I have is that there are no functioning programs as established in statute that are presently certified under these sections. So that is the reason for striking that. If there are questions about the provisions, and once again they are spelled out in the sheet that I circulated, I will be pleased to answer them.

SENATOR CLARK: Senator Vickers, did you want to talk on the amendment. We are on the Stoney amendment.

SENATOR VICKERS: Mr. President, and members, it seems to me that this is the same song, second verse. I was told that there are a total of four amendments laying up there on the desk. I just took up another one a little bit ago, a very simple one. Mine would indefinitely postpone LB 870 and the purposes are not because I do not understand that there is a problem as far as DWI legislation is concerned or the need for DWI legislation. The purpose is simply that we have discussed this issue at quite some length yesterday. We have got one bill in this body already dealing with this same subject and it seems to me that in a point of time we have got 19 days left with a host of issues out there in front of us yet to deal with that it is rather pointless to use two bills dealing with the same subject. If Senator Stoney or this body wishes to use the directions that Senator Stoney is advocating, then it seems to me we should amend the bill that we have already got to do those things that the wishes of this body wish to do. But to have two separate pieces of legislation doing different things, if they should happen to both advance and both pass, I wonder what the bill drafter's office would do or the Revisor of Statutes would do. And I wonder what the law enforcement people would do if we say two things at the same time. So I guess I would just rise to urge the body to reject the amendments and any further amendments coming and then allow the introducers of these amendments to attempt their positions on Select File on the other bill that we advanced yesterday and not take up an awful lot of time in this remaining short period of time debating the same issues over and over again. The issues, of course, are very clear I think to all of us and we all have our opinions as to how we should address them and it seems to me

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that time taken up in this fashion is going to be needed for many of the issues that we have coming up before us and we should certainly dispose of this in a quick manner. Thank you, Mr. President.

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Mr. President and members of the Legislature, I have some articles I am going to hand around to you. This bill that Senator Stoney is offering I think is somewhat more pernicious than the hodgepodge that came out yesterday. I will turn to the last page of this lengthy amendment. It is labeled Request #2788 so the record will be clear. There is an attempt to limit the discretion of the prosecutor which cannot be done. I know it will look good to the public again just like so much of the window dressing in that hodgepodge we did yesterday to say that you are going to compel a prosecutor to bring a certain charge. Let me read the language. It is called Section 5. "Whenever a prosecutor has reasonable cause to charge a person with a violation of Section 39-669.07 or 39-669.08, he or she shall prosecute the person for that crime and shall not plea bargain on that charge." Now if a prosecutor feels there is reasonable grounds to prosecute, that is not...to charge a person with a violation, the prosecutor could have reasonable grounds to bring a charge but may not believe that he can get a conviction. The thing that determines a prosecutor's exercise of discretion is the likelihood of obtaining a conviction, not a likelihood that a certain charge ought to be brought. So these kind of laws are written and drafted by people who don't even understand what the system is now and that is wherein lies my frustration. Anybody could have any opinion they want to about how to deal with drunk drivers. If there develops a certain self-righteousness, you can say, punish, punish, punish, burn at the stake, cut out their tongue, or like the Inquisition, punch a little hole in it, put a padlock on it to show you don't want them drinking that wicked liquor anymore. But that is not going to work at all just like the things yesterday won't work. So there is no way that you can compel a prosecutor to bring the kind of charge that you want that prosecutor to bring. There is no way you can prevent plea bargaining. I don't care what you say or what you try to do but I tell you again this is that kind of window dressing unenforceable type legislation which will trick the public into maybe thinking that something is being done that really is not, but when you get away from this part about no plea bargaining and trying to coerce the prosecutor's discretion, which you cannot legally do anyway, you can look, if you are interested, either now or later at the four brief articles that I attached to this handout.

They all deal with overcrowding in the jails. Chief Justice Krivosha even says in one article dated March 5th of '82, of this year, in the Omaha World Herald: "Another example, he said, is a proposal in the Legislature which would mandate jail terms for drunken drivers. Krivosha asks whether the Legislature would also allocate money to pay for the extra jail space". Who cares about extra jail space? Not the politicians because politicians are not interested in the strains they place on the system as long as they are giving the public the impression that what the public in its ignorance is demanding that they are getting. Now if you overcrowd the jails and it has been found that when you put too many people in a small space you create disorder, then you can expect that disorder to occur. If the penitentiary becomes more overcrowded than it is, and some provisions in this bill will allow penitentiary time, and say there is an outbreak, they call them riots, disturbances, disorders, or whatever, then you know what the Senators are going to say when it becomes publicly faddish to do this? Why don't they do something in Corrections? How do they let things get out order? Why do these things happen? If there was proper supervision, it would not be. Then when the Corrections people come back here and say we told you and told you and tried to tell you again that you don't have enough space...

SENATOR CLARK: You have one minute left.

SENATOR CHAMBERS: ...to cram these people, that if you would read something about psychology, you will see that the concept of territory applies to human beings as well as animals, and when you put too many people in a small space, you invite explosion. And now that which you created and invited has come. Don't try to wash your hands of it. So I think this bill ought to be handled in accord with Senator Vickers' motion which is to indefinitely postpone it. Let everybody get into the record what they want to say about how tough they are going to be on the drunk drivers, then kill this bill because it has no merit whatsoever.

SENATOR CLARK: Senator Vard Johnson.

SENATOR VARD JOHNSON: Mr. Speaker and members of the body, I, basically, rise in support of remarks that have been made by both Senator Vickers and Senator Chambers and I certainly commend Senator Stoney for bringing to the body his own thoughts with respect to how we deal with driving while under the influence of alcohol. But without any question, if we imprison every person whose blood alcohol content is whatever the requisite percentage is and who

happens to be driving a vehicle, we will continue to go down the path of seriously overcrowding our jail facilities, in the sake of dealing with what has become an enormous social problem. Now I, personally, think there is some merit in imprisoning every person whose blood alcohol content exceeds a certain level and who operates a motor vehicle, but notwithstanding my appreciation of the merit of the concept, I genuinely believe that our jails should be reserved for the violent offenders in society, and a person who happens to get into an automobile while he has had too much to drink, number one, probably has absolutely no criminal intent; number two, may not even fully appreciate that he has yet had too much to drink because he is not fully aware of what his own blood alcohol is; and basically is a relatively innocent individual at the time he is operating his motor vehicle. Now it seems to me that what this body needs to do is we need to show our seriousness or purposiveness in telling persons who get into automobiles that they have got to be darn certain that they are not under the influence of alcohol at the time they get into that automobile, but by the same token, we have to balance that purposiveness, that seriousness of our own...with the realization that we just can't keep putting everybody in jail because we are having on our hands as a society today a very serious problem with the overuse of our jails. We want our jails to hold those people who do violence to us, who hurt us, who deliberately hurt us, who take our lives and cut us and the like, but just because somebody gets behind the wheel of an automobile with too much alcohol in his bloodstream does not mean that in every instance that person should go to jail, and that is what Senator Stoney would do in his amendments and with his bill. Now I pretty carefully followed the debate yesterday and I was also reading my bill book and I would hope that every member here would take a look at Request #2773, which never got discussed yesterday, but which is in our bill book, which basically would establish the Maine system, that is the State of Maine system, for dealing with driving while intoxicated. The Christian Science Monitor about two months ago had a very lengthy article about the efficacy of the system in Maine and it has been very, very successful in reducing the number of men and women getting into automobiles while driving while intoxicated and the reason why it has been so successful is it does try to effect this balance, and the balance is you incarcerate that person who seems to be acting in utter disregard of any concepts of the social good and you can put that person in jail, but by the same token, there are some people who get into automobiles having more to drink than they probably even realize they have had who pose some danger but haven't caused an accident, and those individuals will be stiffly fined for first

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offense. Now I suspect the Maine system is a more balanced approach and I think Senator Vickers and Senator Chambers essentially are correct and that is what we should do is to reject LB 870 and to reject the amendments to LB 870 and sit down and keep to the main force which is LB 568, work that bill through with amendments. I tend to favor the Maine approach and I think we will be able to come up with a reasonable DWI statute which will meet the demands that society presently has, rightfully so, to reduce the number of drinkers and drivers on our streets but by the same token not continuous down this path that we follow inexorably to tremendous jail overcrowding and to a tendency...

SENATOR CLARK: You have about thirty seconds.

SENATOR V. JOHNSON: ...to imprison almost everybody in society who commits an offense that we find troubling.

SENATOR CLARK: Senator Cullan, we are on the amendment.

SENATOR CULLAN: Mr. President, members of the Legislature, I wonder if I might ask a question of Senator Stoney.

SENATOR CLARK: Senator Stoney.

SENATOR CULLAN: Senator Stoney, we have had so many amendments and stuff, I am not sure where we were on the other bill, but is it my understanding that your bill will require mandatory time in jail for the first offense DWI and that is not the case with the other bill, is that correct?

SENATOR STONEY: That is correct, Senator Cullan. It would on first offense and conviction provide for 48 hours and a \$250 fine. I might also point out in both classifications where there is bodily injury involved as well as where there is no bodily injury, there is also a possibility with the judge's discretion for probation in that first instance.

SENATOR CULLAN: Thank you, Senator Stoney. Mr. President, members of the Legislature, I would rise to support LB 870 versus the other bill that has been advanced from General File and I think it is perfectly logical for us in some instances to advance competing proposals from General File to later stages of debate. I agree that our population in our prison system in the State of Nebraska is increasing and that there could be some problems there but I don't think those problems are nearly as serious as the problems that we experienced in the past so far as driving while under the influence of alcohol is concerned and I don't think that the public is going to take it seriously until

we begin to require mandatory periods of time in incarceration for driving while under the influence of alcohol. I think this is the basically philosophical difference between the two bills. I think Senator Stoney's is the approach which we should adopt. If we fail to adopt this system, we really are not making substantive changes in the way we are handling DWI. People are going to take this seriously when they have to sit in jail for 48 hours and think about what has happened to them, think about the potential damage which they could have caused by their actions, and I think that this period of isolation from their families and from society is going to be very beneficial in the long run and I urge you to advance LB 870 to make this change in the statutes of the State of Nebraska and do something meaningful as far as DWI is concerned.

SENATOR CLARK: Senator Nichol.

SENATOR NICHOL: Mr. Chairman and members of the body, I have a list of items that I could give you now why we should not adopt Senator Stoney's bill. I have the highest regard for Senator Stoney and always will have. He is an extremely fine member of the Judiciary Committee and I know he has every good thoughts about providing a good bill. However, we have two problems. Senator DeCamp, incidentally, has a bill that is very interesting. We have the big problem of time. If we are going to do anything this year, I don't think we can take Senator DeCamp's bill, Senator Stoney's bill, the committee bill, and argue them sufficiently on this floor to come up with something. Certainly we can't adopt all three. We could only get one. I would suggest that we do kill Senator Stoney's bill, and whatever amendments he tries to put on the other bill, he certainly has an opportunity to do so in trying to get those things into the bill that he would like, and none of us are going to come out with the exact bill that we would like to have. Maybe we will come out with no bill this year which would be worse than most anything. But I would suggest that we do kill Senator Stoney's bill and attempt to amend the one we have started on its way. I really am interested in Senator DeCamp's bill but here again it deals with criminal law, civil law, and a combination of the two which might be very good, and is the Maine bill. I was gone for part of Senator Stoney's presentation but it appears that it is the California law which is working and we would have to make some modifications in our other law to accommodate Senator Stoney's bill. Thank you.

SENATOR CLARK: Senator DeCamp. The question has been called for, do I see five hands? I do. Shall debate now cease? All

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those in favor vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted on ceasing debate? It looks like we are a little short of attendance. We are voting on ceasing debate. Record the vote.

CLERK: 26 ayes, 0 nays to cease debate, Mr. President.

SENATOR CLARK: Debate has ceased. Senator Stoney, do you wish to close on your amendment?

SENATOR STONEY: Mr. President, I am a little confused. Are we talking about the kill motion? Are we talking about the amendment?

SENATOR CLARK: We are talking about your amendment.

SENATOR STONEY: All right, thank you. Yes, I will and I will be brief. Again, we are dealing with a concept in LB 870 which is not expressed in 568, and to be very frank, it deals with mandatory jail time and with fines. I have appreciation for what all of my colleagues have said, more appreciation, of course, for what Senator Cullan said than others, but I do believe that if we had a law such as this it would establish a bit more equity than we have in the present system. Ladies and gentlemen, we have people, the people that we represent, and I know Senator Chambers in his remarks said that the public in their ignorance are asking for this type of legislation, well, ladies and gentlemen, they are the ones that we are here to represent. They are the ones in this instance that need to be protected and I think it is our responsibility as legislators to deal with that. Now Senator Johnson referred to imprisonment and violent offenders, drinking drivers not being those types. Well, they do become those types on some occasions, ladies and gentlemen, because believe it or not they kill people. Drinking and driving is a serious offense. It may not seem too serious to those of us who have never had our lives or our families touched by such an offense but they are violent offenders. I have a letter from a gentleman that would give you some information relative to this particular subject and I want to share it with you. His sixteen year old daughter was killed in Omaha. She doesn't live in my District but she was killed at an intersection, there were stop signs, a four-way stop. She was involved in an automobile accident with a drunk driver. It was this individual's second offense. Now this driver received a fine of \$500. He also was charged with court costs of \$57 and received probation for two years which was subsequently reduced to one year and I think the tragic thing

about this was the judge that pronounced sentence on this individual during the time, the interim from the time the girl lost her life until the man went to trial on this particular offense, himself was picked up as a DWI driver. Now how can someone that deals in justice and inequity be in a position to sentence a person who had participated in a similar activity for which he was charged. I think if we have a law that would provide for mandatory sentence, a mandatory fine, there would be some consistency, there would be some equity, but there would still be latitude for judges if they feel that more restrictive penalties should be imposed on these individuals, the latitude is there in the provisions of 870, and I don't have much sympathy or empathy for those who say that it would fill our jails. I think the people that are taxpayers in the State of Nebraska understand the seriousness of this problem. I think if it takes additional dollars to make their point, that they are willing to support that. Ladies and gentlemen, I would just ask that you adopt the amendment to LB 870, that you advance it. They are conflicting approaches to address the same problem but I feel that they are so divergent that this Legislature should express themselves as to whether or not they want a law which would be provided with LB 870 that would impose mandatory jail time and also fines as contrasted with those in the provisions of LB 568. I would move that LB 870 be advanced or rather the amendments to LB 870 be adopted and I would like a record vote please.

SENATOR CLARK: The question before the House is the adoption of the Stoney amendment. All those in favor vote aye, opposed vote nay. Have you all voted? Record the vote.

CLERK: 25 ayes, 12 nays on adoption of Senator Stoney's amendment.

SENATOR CLARK: The amendment is adopted. The next amendment.

CLERK: Mr. President, the next amendment I have is from Senator DeCamp. It is Request 2773 and you will find it in your bill books.

SENATOR CLARK: Senator DeCamp, you have got five minutes to put it through.

SENATOR DeCAMP: Mr. President and members of the Legislature, I said that I would attempt this amendment on another bill when and if I had the support of all the alcohol and safety groups in the state. I am still waiting for those letters to come in. I have got about three-fourths of them done.



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Then and only then will I attempt this and I told Larry Stoney, therefore, since he wanted this bill in his form. I would withdraw this amendment and I do do that.

SENATOR CLARK: It is withdrawn. Next amendment.

CLERK: Mr. President, the next amendment I have is from Senator Haberman.

SENATOR CLARK: Senator Haberman. Who would know where Senator Haberman is? Only the Lord. Let's go to the next motion.

CLERK: Mr. President, the next motion I have is from Senator Vickers. Senator Vickers would move to indefinitely postpone the bill.

SENATOR CLARK: Senator Vickers. I doubt that we are going to finish this by noon so go ahead.

SENATOR VICKERS: Mr. President, I raised this issue earlier in the debate that we should not have two bills dealing in this same area going different directions and that we should collectively decide what we wanted to do in this area and do it in a fashion so that everybody in this state including ourselves would know exactly what we are doing and I suggested that since we have a bill on Select File, LB 568, that we advanced yesterday, that Senator DeCamp, Senator Stoney, and various other, Senator Haberman, and various other members of this Legislature that have different ideas should use that as a vehicle to attach their ideas to if they could get the majority of the body to agree and not have two separate bills. But realizing the shortness of time and realizing that it is probably going to take two votes anyhow, I would ask to withdraw my motion and simply vote Senator Stoney's LB 870 down.

SENATOR CLARK: Senator Haberman has withdrawn his. Senator Vickers has withdrawn his so the motion is to advance the bill. Do you want to say anything on that, Senator Stoney? You have got about two minutes.

SENATOR STONEY: To conserve time, I would say, no. I think the arguments have all been made.

SENATOR CLARK: The question before the House is the advancement of LB 870. It is debatable. Your light has been on all the time.

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LB 870, 653, 726, 749A, 971

SENATOR CHAMBERS: Here is what I want to ask, would we come back to this this afternoon?

SENATOR CLARK: Yes, if we don't get a motion now.

SENATOR CHAMBERS: Then I have something I want to say because I have an amendment...

SENATOR CLARK: All right, then we will hold it until this afternoon at one-thirty.

SENATOR CHAMBERS: Well, since you only have three minutes, should I wait until this afternoon to speak?

SENATOR CLARK: Yes, I will hold your name up here. You will be the first to speak this afternoon. Senator Stoney, would you like to recess us until one-thirty please after he reads some things in.

CLERK: Mr. President, I have a reference report referring a gubernatorial appointment.

Senator Koch would like to print amendments to LB 653.

A new A bill, 749A by Senator Kilgarin (read title). Mr. President, a new bill LB 971 introduced by the Speaker at the request of the Governor (read title).

Mr. President, finally, Senator Beutler asks unanimous consent to add his name to LB 726 as cointroducer.

SENATOR CLARK: No objection, so ordered.

CLERK: I have nothing further, Mr. President.

SENATOR CLARK: Senator Stoney.

SENATOR STONEY: Mr. President, I would move that we be in recess until 1:30 p.m.

SENATOR CLARK: You heard the motion. All those in favor say aye, opposed. We are recessed until one-thirty and we will continue with 870.

Edited by

Arleen McCrory  
Arleen McCrory

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LB 628, 631, 669, 669A,  
722, 782, 827, 870

SENATOR CLARK PRESIDING

SENATOR CLARK: You will check in, please. Record the presence, please.

CLERK: Quorum present, Mr. President.

SENATOR CLARK: Senator Stoney. We have another motion on the bill right now.

CLERK: Mr. President, your Committee on Enrollment and Review respectfully reports they have carefully examined engrossed LB 628 and find the same correctly engrossed; 631, 669, 669A, 722, 782 and 827 all correctly engrossed.

Mr. President, on LB 870, Senator Chambers would move to indefinitely postpone the bill.

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I feel that this is a motion that can bring the whole subject of this particular bill to a head. Now one of my major concerns, it should be clear, is the provision about mandatory sentencing, mandatory jail time. I am sending another handout around to you to show you in documentation in the newspapers about the type of overcrowding that is occurring not just around the country but in Nebraska. We have, on the second page the headline says: "Penal complex is sorely overcrowded." This is a statement from the people who run the Penitentiary here. Another statement from Judge Krivosha that there is no evidence that putting people in jail for longer periods of time prevents others from committing crimes. Jail alone is not a way to handle problems. Then for those from Lancaster County and surrounding areas, dangerous overcrowding is jail's worst. Their head of their Department of Corrections has pointed out that they are facing the worst overcrowding in the history of their twelve-year jail. Then the following page talks about a judge in Albuquerque, New Mexico who was faced with the law requiring mandatory sentences. Rather than sentence a young man in accord with the law, this judge stunned everybody in the court room by resigning on the spot from his judgeship, and he had a philosophy of sentencing, a philosophy of justice both of which were violated by the provisions of the mandatory sentencing law, so he resigned on the spot. It shows that people do have convictions, that they will follow them to what some people might consider unreasonable extremes. The next page will tell about a judge in Philadelphia who ordered the release of over a hundred prisoners because of

the overcrowding conditions. Then below that in Montgomery, Alabama, there is a wholesale release of 352 more prisoners, so others have been released already. But because of the overcrowding that had to occur. Following that is a WOW T editorial the last paragraph of which says: "Meanwhile, a question. With no provisions in the President's program for federal funding of new corrections facilities, where are we going to put all those bad guys, the new 'get tough' programs sentenced to prison." And the rest of the editorial deals with these attitudes of the Reagan Administration which were designed to bring back into prominence the Duke Wayne syndrome, John Wayne, for those of you who are not on the familiar terms with him. The next page talks about the soaring number of inmates in jails throughout the country. Now Norman Carlson is the Director of the U.S. Bureau of Prisons, and he said, The Reagan Administration budget cuts would force him to reduce support for half-way houses this year rather than increase it as he would have preferred. So here is an expert who is telling you that the long prison sentences are not the thing to be done in the area of correction, but unfortunately those with the knowledge are not the ones who vote on laws. It goes on to say that state officials attributed the increase to new stiffer sentencing and parole laws as well as an increase in crime rates. It talks about California and New York, both of which recently enacted laws mandating prison for certain violent and drug related offenses. Both added more than 2000 inmates. Then the last paragraph talks about Indiana which abolished parole altogether. They are now facing a situation where the prison population has grown 34 percent and they have what they term as a crisis. On that same page is more discussion of Nebraska's problem with overcrowding in the Penitentiary. I am getting this into the record. There is an article even from the Daily Nebraskan which talks about some comments made by an assistant professor of Criminal Justice and he indicated that building new prisons and expanding existing facilities is a national trend which may be shortsighted and could make the crime control situation worse. So if you would like to read any of these things to get more information, they are there for you. Then we come to the World Herald. An editorial in the Omaha World Herald, one of the most reactionary, non-compassionate newspapers in the state, why the editor could be a member of the Legislature, the most conservative wing who could stand next to my good friend, Senator Howard Peterson and make him seem like a wild-eyed radical. And here is what the World Herald had to say. They are talking in an editorial dated March 6th, 1982, about those who will not register for the draft and they said that it is not

practical to jam 900,000 youths into already overcrowded jails. They recognize that there is overcrowding in the jails of this country. Now when the World Herald can recognize something like that, and I am sure it was a very difficult thing for them to do, I am sure that the individual who had to type this had fingers that almost atrophied before they came in contact with the keys that would type such a heresy, but nevertheless the situation is so serious that they had to do it. Now I have a couple more things to say that are more directly on the bill itself. This bill is dealing really with the philosophy of punishment. What is to be achieved by punishment, what is the goal? If it is merely to put somebody in pain or discomfort or inconvenience them, then I would say pass a bill like this only increase the punishment. If the idea is to try to take a step in the direction of dealing with the problem of drunk driving, this bill misses the mark completely and it ought to be indefinitely postponed. That is why I am offering the motion that I have. But I have something to mention to you about this California experience. If you will notice on the very front page of that handout, you will see that a judge in San Diego, California, was convicted for the second time in nine months of drunken driving. Now that judge in his drunken state, I hope not, but nevertheless maybe is still on the job. As Senator Stoney said, this guy will probably be sentencing other people to jail for drunk driving. But here is the question that needs to be asked about the California experience, but before asking it, consider this. They all talk about a few days into the new year and a drop in the number of whatever they talk about, I don't know if it is the number of arrests, convictions, accidents involving drunk drivers or just what, but what you have to do is look at the accident rate caused by any reason during that period which nobody does. So maybe there has been a noticeable drop in all types of accidents, but they do not make their statistics have validity by having a point of reference or comparison. In addition to that, I think it takes more than a few days to determine the actual effect of a law such as the one that supposedly exists in California. But because this bill that Senator Stoney has offered has so many defects from where I judge it, I think it needs to be killed. Two other points and I am through. I did make the remark that the people in their ignorance are asking for a bill like this with the mandatory sentences and so forth. Senator Stoney correctly stated that our job even if those people are ignorant is to represent them, and my rejoinder is that our job is to represent them but not to reflect their ignorance. We are to get information and do

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those things based on informed judgment that they perhaps would not have us do because they don't understand. Senator Stoney also said that this is such a serious problem that he thinks the people would give the additional dollars necessary to bring about the existence of facilities to put these people who would be arrested. Now that is a paraphrase. But you will notice that when the Governor talked to you all yesterday, I wasn't here, he suggested deferring until fiscal year 1983 and '84, \$500,000 on the medium minimum security facility in Omaha. So on the one hand Senator Stoney believes more money is going to be available and you have the Governor telling you not so, not so, we are going to defer some of the money that has already been set aside for a given purpose related to providing a corrections facility. So with those considerations, I think it would be wise for the Legislature to kill this bill and if we must argue and squabble on the issue some more, let's do it on the thing that was passed yesterday. One other point that you may know and you may not know is that in Iowa for the past year....

SENATOR CLARK: You have one minute.

SENATOR CHAMBERS: ....the sheriff in one of the counties told his deputies not to make arrests for certain offenses that were minor because the jail was overcrowded and they had no place to put anybody, so don't make arrests. You have to determine what kind of people you want in jail, and if the jails are already crowded now, you are going to put the judges in a position that has been found to exist in other states, that those who have committed even serious crimes against the person, intentional crimes, will have to be released because of the overcrowding. So I think this bill ought to be killed for the reasons I have given and other reasons which you in your intelligence have determined.

SENATOR CLARK: I would like to announce 26 guests from Seward. They are from Senator Sieck's District. The teacher is Becky Reisinger. They are in the north balcony. Would you stand and be recognized, please? Welcome to your Legislature. Senator Stoney.

SENATOR STONEY: Mr. President and members of the Legislature just to address some of the points that Senator Chambers had made and as you may well imagine I am not in agreement with most of them. One of the latter points that he made dealt with the subject that we visited about earlier and that is dealing with the general ignorance of the people that we represent, and I would just like to

expound upon that a bit because it seems to me just a few years back there were a group of people from the Lexington area that were very concerned about sexual assaults, and the laws here in the State of Nebraska, and they came to their representative, Senator Herb Duis of Gothenburg, and they offered him proposals both statutory and constitutional amendments to deal with the issue of making sexual assault a nonbailable offense. Now, Senator Chambers, if my memory serves me correctly, was one of those that fought this proposal and he explained that it would not work, it cannot work. Now the bill that would have dealt with this issue statutorily was not successful, but as you recall the bill that dealt with it constitutionally was placed on the ballot, it was adopted by the citizens of the State of Nebraska. It has been before the United States Supreme Court and they, ladies and gentlemen, have vindicated the so-called ignorance of the citizens of the State of Nebraska. And I think that this is just one example that I could remember that would give credence to what I am attempting to say here with LB 870. Now Senator Chambers referred to the overcrowding of jails, the prisons, the Penitentiaries, but let's remember we are dealing with first offense first. Let's take first things first. And we are talking about 48 hours, and my argument is that for first offenders if such a penalty were prescribed that this may eliminate subsequent problems which could create subsequent jailings which in the long run for longer terms could contribute to overcrowding and having to build larger facilities. But I think that that argument is rather invalid with what we are attempting to do on the first offense. And it is my contention that if this bill were enacted into law, that it is going to be a tremendous deterrent. Let me read to you from a letter that I received from one of Senator Koch's constituents. He says, "This is to support your effort to write a strict drunk driving law. It is about time a progressive country like ours took strong steps to remove these people from killer automobiles. Our papers are full of the monumental tragedies brought about by drunken killers, and if they killed in the bars we would take them out of circulation, yet we are apologetic when they kill an innocent carload of people. Now this is the important point. I drink and I have driven while drunk. I would never do that if I knew there were strong penalties. Let's enact a law in our country to stop this carnage." And that comes from an individual, ladies and gentlemen, that says that he himself is a drinker. But if we had a law such as this, he would not be drinking, driving and subjecting others to possible injury and death. So, therefore, I would rise in opposition to Senator Chambers' motion to indefinitely

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postpone LB 870.

SENATOR CLARK: Senator Nichol.

SENATOR NICHOL: Mr. Chairman and members of the Legislature, the criminal justice system in California simply doesn't operate as the criminal justice operates in Nebraska. Like Maine, California does not have an integrated statewide probation system for the courts to rely on. California does not have the same type of court system we have and there is about the same chance of taking a criminal statute from another state and enacting it here in Nebraska and expecting it to work as it would be for Senator Warner to take an appropriation measure from another state and expecting it to work here. You have to work with the system that is in place, not a system that is in another state. California didn't even have a one percent per se violation until the recent enactment, last year. We are following California not at all. They are following us more than we are following them. Now, yesterday Senator Hoagland said that it wouldn't hurt anything to put two or three hundred people in jail in Nebraska. What are you dealing with here? You are not dealing with two or three hundred people. You are dealing with five to six thousand people in jails...five to six thousand people in jails, not two or three hundred. I think that if you want to do this, you can put it in the bill that we adopted yesterday or attempt to rather than accept another state's drunk driving bill and expecting it to work in our system. It won't do it unless we want to revise the whole system and go back and change a bunch of laws so that our backlog of laws applying to this will be like California's or like Maine's, or some other states that we want to apply. Let's have a system set up, a Nebraska system, so that we can put on the amendments we want whatever they are and whatever the majority of the people in this body decide, that's the way it will be. But let's put it on a bill that is accommodating to the laws of Nebraska. I move for the indefinite postponement of LB 870.

SENATOR CLARK: Senator Vickers. Senator Cullan.

SENATOR CULLAN: Mr. President and members of the Legislature, Senator Nichol stands up and suggests that we indefinitely postpone the bill because it won't fit into Nebraska law but he doesn't cite one example where there is a conflict between this and existing law. He doesn't offer us any explanation of why this will not fit into the Nebraska law. He merely says it's a different system of law, it won't work. Well, you know, I guess the mental



health law that we have written was based upon modified statutes from other states, from Illinois, from many other states that have had experience in this area. We do it every day. We look at the statutes in other states and we try to borrow good concepts from other states and incorporate them into our own statutes. But the fact that it comes from California doesn't mean anything to him, and unless Senator Nichol can articulate in a clear and concise fashion why there is some problem with adopting this concept into Nebraska law, I don't understand his argument. Just because it came from California doesn't concern me and I don't think it should concern you. Secondly, the point I would make is that this bill was not talking about putting individuals in jail for extended periods of time. It is talking about 48 hours. Most of those are probably going to occur on the weekends, and I am not sure that that is such a tremendous problem. You know, if you were putting them in jail for a year or something, or 30 days, it may create a serious problem, but that is not what we are talking about doing. Another point I would make is that the State of Nebraska recently decriminalized public intoxication, so those individuals who used to walk the streets in the State of Nebraska or who used to come out of bars who were intoxicated and be arrested at that time can now get in their cars and drive. And as a result of repealing public intoxication, we tremendously, tremendously, reduce the number of people placed in local jails in this state. Sheridan County's jail load decreased tremendously and I am sure the same thing is true across the State of Nebraska because those people who used to be picked up every night and many of them on the weekends are no longer in jail. So I don't believe that the 48-hour jail provision is going to create the problems, that mandatory sentence is going to create a problem as far as the jails are concerned because those people used to be there and they are not there any more. So I disagree very much with the comments that have been made in opposition to the bill. I think it is a basic philosophical issue. You want mandatory sentence. You want the individual to spend some time, incarceration, to review and think about what he has done, and I urge you to advance LB 870. I see no reason to reject this proposal in favor of the one that was advanced yesterday.

SENATOR CLARK: Senator Cope.

SENATOR COPE: Mr. President, members, I have a suggestion on Senator Nichol's 6000 people we are going to have to make room for in jails. If we put 200 in jail, I think we are going to scare the booze out of the other 5800 and maybe we won't need room for them.

SENATOR CLARK: Senator DeCamp. The question has been called for. Do I see five hands? I do. All those in favor of ceasing debate will vote aye, opposed vote nay. The vote is to cease debate.

CLERK: Senator Clark voting yes.

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

CLERK: 26 ayes, 0 nays to cease debate, Mr. President.

SENATOR CLARK: Debate is ceased. Senator Chambers, do you wish to close?

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, as often happens here when a nonlawyer attempts to track the history of a piece of litigation, there are missteps that he or she might make along the way. On that great bail bill, the District Court upheld the bill, the federal District Court. The Eighth Circuit threw it out, so the Eighth Circuit said it is unconstitutional. It then was appealed to the U.S. Supreme Court which did not uphold it, it simply said it would not rule on it at all because the individual whose case led to it being brought to the court had already been decided so it was declared moot, which means the court took no position at all. So the highest court in the federal system that dealt with the question itself, the Eighth Circuit Court of Appeals, had thrown the thing out. So Senator Stoney was not quite accurate and maybe he was a good reflection of that word that I attributed to some of our constituents. And, by the way, when I used the word ignorant, I didn't mean that a person lacks knowledge of any and everything and cannot learn or is slow or is retarded. I had put it in this way that there are issues about which we have more information than they do and they, because they are ignorant of these things, will insist on a certain type of thing which is impractical or not feasible, and I still feel that when you look at the entire criminal justice system, especially the corrections end of it, or the lockup end of it, these types of bills do not compute, they should not be there. So I am still saying that this bill ought to be indefinitely postponed. If you don't want to look at the arguments that I have given you as a reason, consider the fact that you do have one on Select File already. Now if this other one goes to Select File too, should that one move on, then you have got this one to argue again, and I assure you that it will be argued again. So in the interest of conservation of time and energy as well as good arguments, I think this bill should be indefinitely postponed.

SENATOR CLARK: The question before the House is the indefinite postponement of the bill, 870. All those in favor

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vote aye, opposed vote nay.

CLERK: Senator Clark voting yes.

SENATOR CLARK: Have you all voted? We have about eight people absent. Senator Chambers, I am going to call the vote. Those in favor of a Call of the House will vote aye, opposed will vote nay. Record the vote.

CLERK: 11 ayes, 0 nays to go under Call, Mr. President.

SENATOR CLARK: We are under Call. All Senators will return to their chairs and check in, please. Senator Howard Peterson, will you check in, please? Senator Rumery. Senator Koch, Senator Cope. Senator Koch, will you check in, please? Senator Chambers, did you want a roll call vote? We have got five absent. The Clerk will call the roll.

CLERK: (Commenced reading the roll call vote.)

SENATOR CLARK: First I will tell you that we are voting on the indefinite postponement of 870. Go ahead, call the roll.

CLERK: (Read the roll call vote as found on pages 1131 and 1132 of the Legislative Journal.) 21 ayes, 20 nays, Mr. President, on the motion to indefinitely postpone the bill.

SENATOR CLARK: What was the score?

CLERK: 21 to 20.

SENATOR CLARK: It is indefinitely postponed. The list you have on your desks, what we are going to do now is to take Select File and we are going to take all the bills without amendments and these are the ones that you have the list on your desks now. We will take those without amendments first except the E & R amendments. Then we will go back to the ones that have the amendments on, and they will not move their place on the file, just go right through. Question.

SENATOR DeCAMP: Well, you have got a real long list here. Just because they don't have amendments they are moving ahead. Does that mean then we are going to do it without debate, or what?

SENATOR CLARK: Yes, there will be no debate on it.

SENATOR DeCAMP: Okay.

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LB 591, 714, 870  
LB 875, 889, 948

PRESIDENT: The motion carries and LB 875 is advanced to E & R initial. Yes, you may read some matters in, Mr. Clerk, go ahead.

CLERK: Mr. President, your committee on Public Works whose chairman is Senator Kremer instructs me to report LB 889 advance to General with committee amendments attached. Senator Pirsch would like to print amendments to LB 948, Senator Goodrich to print amendments to LB 591 and, Mr. President, Senator Beyer would move that the Legislature reconsider its vote on the indefinite postponement of LB 870. That will be laid over. (See pages 1164-1165 of the Legislative Journal.)

PRESIDENT: The next bill then is LB 714, Mr. Clerk.

CLERK: Mr. President, LB 714 offered by Senators DeCamp and Fenger. (Read title.) It was first read on January 8 of this year, referred to Public Health and Welfare for hearing. The bill was advanced to General File, Mr. President. There are Public Health and Welfare Committee amendments pending.

PRESIDENT: The Chair recognizes Senator Fenger for purposes of taking the committee amendments. Senator Fenger.

SENATOR FENGER: Thank you, Mr. President, fellow members, the committee amendment, that is the white copy in your bill book to LB 714 become the bill. In public hearing at the Health and Welfare Committee we heard some bizarre stories that concerned many of the children in our state. This bill is not submitted as a cure-all to the problem because frankly I lacked the necessary legal experience. I couldn't even estimate how far it will go toward solving the problem that it addresses. I would remind you there has been seven separate studies done regarding foster care and foster children the past seven years and it is obvious to me the studies alone haven't solved anything. An accurate figure is not available of the foster children of the state but the best estimate of use under the total foster care program number five thousand with eighteen hundred and fifty of them placed there as wards of the Department of Welfare. State funds involved in this area alone last year was \$13,600,000 not including administrative costs of the staff. I cite those figures to you only to show the magnitude of the problem. 714, as amended, provides for the establishment of a State Foster Care Review Board consisting of seven members, one member at large, two members from each of the three congressional districts. They are serving three year terms on a staggered basis. Appointments made by the Governor and the board is such it would be autonomous.

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CLERK: Mr. President, Senator Beyer would move to reconsider the Legislature's action in the indefinite postponement of LB 870. The motion may be found on page 1165 of the Legislative Journal.

PRESIDENT: The Chair recognizes Senator Beyer.

SENATOR BEYER: Mr. Speaker and colleagues, I ask reconsideration of this IPP motion on LB 870. The day that this was debated was the day of our Class of '81 Chili Feed and I was in and out of the Legislature and did not hear all of the debate. So I would like to have this bill reconsidered.

PRESIDENT: Any further discussion on...Senator Stoney, on the Beyer motion to reconsider the indefinite postponement. Senator Stoney.

SENATOR STONEY: Mr. President and members of the Legislature, I will be brief in addressing you on this issue. Many of you, as a matter of fact the majority, I have visited with since action was taken on this bill last Thursday. You will recall that the vote was 21 to 20 to kill this proposal. It was a simple majority. And with many that I have visited with, they feel that with the importance of this issue and the thrust of this proposal that it should indeed be given further consideration this session. Now this bill, to refresh your memories, will provide mandatory jail sentences and fines for those who are convicted of driving while under the influence of alcohol. Let me add, however, one proviso...I have agreed and this came about through discussion with many of you who I visited with about reconsideration on this motion that the provision originally in the bill which provided for mandatory jail sentence and fine is being eliminated. If the reconsideration motion is successful, I do plan to place on the Clerk's desk an amendment to address that. Many also expressed their concerns with having two propositions to be considered this year dealing with the same issue, that being the drunk driver. But let me say this relative to the differences between LB 568 which has been advanced, that proposal which was offered by the Judiciary Committee and LB 870. LB 568, ladies and gentlemen, provides for suspension of sentences on second and subsequent offenses. This would not be true in LB 870, so there is a philosophic difference here that you must deal with in your own conscience on deciding whether or not you will support that proposition or what is incorporated in LB 870. So that is the major distinction. I just circulated and hope that you will take the time to refer to the poll which

appeared in the Omaha World Herald last Friday one day after 870 was indefinitely postponed. You will find that the survey that was taken dealt with mandatory fine and jail sentences. You will see that on second offense 91 percent of those people polled felt that there should be mandatory jail sentences and fines for these individuals who are convicted of this offense. Additionally, in subsequent offenses, third, etcetera, 86 percent favored this. So, ladies and gentlemen, I would ask that you join me in reconsidering our action on LB 870 so we might properly address this issue during the 1982 session. Thank you.

PRESIDENT: The Chair recognizes Senator Nichol.

SENATOR NICHOL: Mr. Chairman and members of the Legislature, I rise to oppose the reconsideration of LB 870. I want to draw your attention to what you are doing, and if you want to do what you will be doing, it is okay but I want you to know it so there is no doubt in your mind. LB 870 is the California approach and if LB 870 would have considered Nebraska laws instead of California laws, you would have the present proposal by the Judiciary Committee which is LB 568. I don't know much about California's criminal justice system but what I read and see they don't have any magic formula as to what we should be doing here in Nebraska. For one thing, they didn't have until 1981 the point one per se law which we have had for ten years. Now in case you are wondering what that means, it is that you have a test to show how much alcohol is in your blood and when you are legally drunk. We have had this .10 for years and all of a sudden last year California adopted it which made it a great thing to do. Now Senator Stoney has cleaned up some of the technical problems with his bill in his amendments, which amendments, incidentally, use language from the committee draft. Even so, LB 870 still won't work. Senator Stoney attempts to take the California penalties and place them into an enhanced penalty structure not in conformance with the Nebraska Criminal Code. Aside from the obvious technical questions, this approach is probably unconstitutional in context. Even if it isn't ultimately construed as an unconstitutional ex post facto provision, it violates due process of law in the way it attempts to enhance penalties. Nebraska law is quite clear on how you can enhance penalties. In fact, the only interpretation the Nebraska court could put on this bill to save it would be to construe it so as to wipe the slate clean for every drunk driver in the state. Consider for a moment what it would mean to the criminal justice system in this state if we passed a law clearing all drunk drivers of their past

offenses. LB 870 would do just that. Maybe you don't think that is important but I do, and I don't think we should be bringing back LB 870 to say, all drunk driving offenses in the past are forgiven and wiped clean from the slate. The committee draft would accomplish this by taking prior convictions into consideration for sentencing purposes not for enhancement of the type of offense. I know there are a lot of people out there that want to put drunk drivers in jail, but in America you have to convict them first. This bill simply isn't going to do that job and I oppose the reconsideration. Incidentally, meeting yesterday with Senator Haberman who sponsored LB 568 originally and which, of course, has been amended by the committee amendments will attempt to put mandatory jail sentences on first, second and third offense drunk driving, whether or not you adopt that will be up to you but I don't think we should take LB 870 especially this year to attempt to make it into something palatable and workable. I oppose the reconsideration.

PRESIDENT: The Chair recognizes Senator Haberman.

SENATOR HABERMAN: Mr. President and members of the Legislature, my staff in my office has spent hundreds of dollars and hundreds of hours in drawing up LB 568 which started out with many of the things that Senator Stoney has in his bill. Now I have met with many groups and found out that that isn't the way to go, it isn't going to work. So the committee came out with a bill and now Senator Hoagland and I who are sponsoring 568 have met with the committee. I believe we have worked out a compromise that will have mandatory sentencing. It will be up to this body to accept them, and I would ask that you do not revise Senator Stoney's bill because we should not have two bills on the same issue before this body, as we only have 13 days left. It takes 8 days for a bill to go across the board, a fourth of that time is going to be spent on Final Reading. We have to get to the budget. We have to get to the \$80 million distribution, and we just won't have time and the public is demanding that we come out and we pass a new form of DWI legislation, and as I say, Senator Hoagland and myself and the committee and Senator Nichol, we have gotten together, and if Senator Stoney wishes to try and wants to put some amendments onto 568, that is fine, and if the body buys them that will be fine. But to have a brand new bill and have amendments be put on that and take it out and attack it and it will just turn it into a fight. We are going to lose time and this body will end up with not having passed a DWI bill and then what are we going to look like in the eyes of the public? So I say to you, let's let Senator

Stoney amend the present bill any way he wishes, and if his amendments pass, fine. But let's deal with one bill because we do not have time to deal with two and both of them will go down the tube and you know what that is going to look like and we do need a change in our DWI bill. Thank you, Mr. President.

PRESIDENT: The Chair recognizes Senator Kremer. We will come back to Senator Kremer. We will go to Senator Apking.

SENATOR APKING: Mr. President and colleagues, yesterday I had my office talk to Sheriff Byron Buzak from Crete. As probably all of you know, Saline County has had a great deal of tragedy with drunk drivers in the past couple of years and Sheriff Buzak is the law enforcement officer of the area. He certainly is no stranger to dealing with drunk driving problems and so forth. He compared the two bills and he said that the committee bill even though it has some good points to it really leaves too much up to the judges, and that seems to be the heart of the problem that the judges are suspending sentences, plea bargaining and so on and so forth. He felt that the Stoney bill while it does have some parts that need amending, it would be the much easier bill for our law enforcement officers to try to get these drunk drivers off the road. Thank you.

PRESIDENT: The Chair recognizes Senator Sieck.

SENATOR SIECK: Mr. President and members of the body, I have had kind of a rough morning here. I have lost a cow out there because of the mud and power, and another one is down so that is what I have been doing, I have been on the phone quite a bit. But on this particular bill, I just cannot support something here that will not work. It just will not work, and I can't understand why we want to do something. We have to get something here that will work and the committee bill is the one that will work. And as Senator Haberman said, we made some compromises even though I don't agree with some of the compromises, we do have to get something, and we have to have something that will work and get the job done, and I feel it will get the job done. But I do have a question of Senator Nichol.

PRESIDENT: Senator Nichol, would you respond?

SENATOR NICHOL: Yes, sir.

SENATOR SIECK: You mentioned here earlier in your statement ex post facto, and I tell you I am lost, I don't know what that means. Could you explain that to me?



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SENATOR NICHOL: Senator Sieck, very simply, ex post facto law is one which renders an act punishable in a manner in which it was not punishable when committed. Now the Legislature can change trial procedure and a new procedure may be made applicable to offenses previously committed without violation of this constitutional provision. But what we cannot do is impose additional punishment for an act already committed. The committee gets around this provision by changing trial procedure to allow courts to take into consideration prior convictions during sentencing. We do not enhance present penalties in the law. What we do is make mandatory those penalties that are applicable to the various offenses now. This is a very important distinction and it is what saves the committee draft from violating this particular section of the Constitution. What Senator Stoney's draft does is escalate penalties beyond what present law provides for and attempts to use prior convictions to attain those enhanced penalties. This you cannot do. As I mentioned previously, the only way the courts can continue this section to be constitutional would be to wipe the slate clean for all drunk drivers in the state. Can't have it both ways. Thank you.

SENATOR SIECK: Members of the body, do you want to wipe the slate clean? I say, no. We have got people out there that are driving on second and third offenses. Even though they may be only on the first offense, we have got to catch them, we can't wipe that clean and I think this will do a lot more good as far as the drunken driving. Those first offenders, if we hit them pretty hard the first time, I think that is going to stop a lot of them. But our problem is with those that are constant alcoholics as you might say, and we have got to catch them and we have got to stop them. So I am going to ask you to vote against raising this bill, 870. Thank you.

PRESIDENT: The Chair recognizes Senator Marsh.

SENATOR MARSH: I call the question.

PRESIDENT: The question has been called for. Do I see five hands? I do. All those in favor of ceasing debate will vote aye, opposed nay. The question is, shall debate cease? Have you all voted? The question is, shall debate cease? Record the vote.

CLERK: 26 ayes, 0 nays to cease debate, Mr. President.

PRESIDENT: The motion carries, debate ceases. Senator Beyer,

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you may close on your motion to reconsider the vote.

SENATOR BEYER: Mr. Speaker, I will yield closing to Senator Stoney.

PRESIDENT: All right, Senator Stoney, if you would then make the close.

SENATOR STONEY: Mr. President and members of the Legislature, I will attempt to address some of the comments that have been made by my colleagues concerning this proposition and the motion to reconsider. First, Senator Michol mentioned some of the technical difficulties with this problem, or with this particular proposal. And let me assure you that I am willing and I know we can accomplish working together to do anything that we can to incorporate the provisions in this bill, integrate them into present Nebraska law. Now there is one problem that may exist and that again I will reinforce, that being we have competing philosophies here. The committee bill allows judges on subsequent offenses to suspend sentences. LB 870 would not provide for that. I am committed because your constituents and mine are so concerned about this issue to spend whatever time is necessary to offer to you on Final Reading a bill which will address this serious societal problem. I am committed to work with the Judiciary staff. I have always had a good working relationship with them, any time before the session, after the session, weekends, whatever time it takes to accomplish this. Prior offenses being wiped from the slate with LB 870 is one point that was made. This is not my intention and I am sure that sitting down with Mr. Goc we would be able to amend this so that this could be effectively dealt with. In the case of Senator Haberman, I think a great deal of this may have to do with pride of authorship, and I can respect that. As a matter of fact, I would be willing to remove my name as introducer of LB 870 and let anyone else that would like to take the credit for it become introducers of the proposal, if we can just pass this year a law to address this serious problem. Now I have attempted to get together and to visit about this, but it is very clear to me once again that there are distinct philosophical differences on this issue. Some believe in providing the judicial discretion over and over and over again and 870 will not provide for that. If a person is an offender one time and is convicted, they have an opportunity for probation. They have an opportunity to amend their ways. But with the provisions of LB 870 on second or subsequent offenses, those individuals would be subjected to mandatory jail time as well as a fine. And I think, ladies and gentlemen, from the poll that I referred to earlier this

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is what your and my constituents are interested in. Senator Sieck says that the bill will not work, it will not work. Well, let me refer once again to the State of California which enacted this law, the provisions incorporated in LB 870, just this year, ladies and gentlemen. In California during the three-day New Year's holiday, traffic deaths dropped from 47 last year to 27 this year. This was the lowest total in California in twenty years. Now, ladies and gentlemen, why do they think that they had such a reduction? Because of the new law. I would like to see a similar reduction as I am sure you would in traffic fatalities here in the State of Nebraska. I would move that you join me in voting to reconsider our action on LB 870. I would also request, Mr. President, a Call of the House and a roll call vote.

PRESIDENT: All right, so the first motion will be to place the House under Call, Senator Stoney. All those in favor of placing the House under Call will vote aye, opposed nay. Waiting to have a Call of the House and then as I understood Senator Stoney then when they are all present then you want a roll call vote. Thank you, Senator Stoney. Record the vote.

CLERK: 24 ayes, 0 nays to go under Call, Mr. President.

PRESIDENT: The motion carries. The House is under Call. Sergeant at Arms will see that all members are returned to their desks. All other personnel will leave the floor. The House is under Call. All members will register your presence at this time. Please register your presence. And there are how many excused, Mr. Clerk?

CLERK: There are five excused.

PRESIDENT: Five excused. Do you want to name them?

CLERK: Four excused.

PRESIDENT: Four excused. Dworak, Marvel, Vickers and Chambers. Senators Dworak, Marvel, Vickers and Chambers. While we are waiting for the members to return, the Chair would like to take this opportunity to introduce some guests of Senator Richard Peterson, Fred Egler, Webb McNally, Dave Gerharter and Roger Schultz. They are under south balcony. Would you stand and be recognized and we welcome you to your Unicameral. Senator Warner, would you put a little bit of the green on even though it isn't St. Patrick's Day. Senator Nichol, could I bother you to...thank you. Senator Koch...thank you. Senator Higgins and Senator Schmit.

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Sergeant at Arms will find Senator Higgins and Senator Schmit and then we are ready to proceed. Senator Schmit is here so we just need to get him in his chair and then we will....Senator Higgins, we have to wait for Senator Higgins anyway. Senator Higgins is the only one. All right, Senator Stoney, shall we proceed? Senator Higgins is the only one. So if you are ready to proceed we shall proceed. Proceed with the roll call vote then. The question, Mr. Clerk, you might repeat the question for those who came in so they know what we are voting on.

CLERK: Mr. President, the motion before the membership is to reconsider the kill motion on LB 870. (Read the roll call vote as found on page 1306 of the Legislative Journal.) 30 ayes, 14 nays, Mr. President.

PRESIDENT: Motion carries, LB 870 is now to be reconsidered. All right, now it's back on General File, Senator Beyer, so it is ready to be dealt with in the future. It is now in a position to be brought up again. We will proceed then with the next agenda item 6, General File, priority bills Special Order, LB 816, Mr. Clerk. Ready for Select File. That's where we are, yes.

CLERK: Mr. President, while we are waiting I have amendments from Senator Landis to be printed in the Legislative Journal to LB 765. (See page 1306 of the Journal.)

PRESIDENT: I understand those have been taken care of so we are on Select File on the reverse side. We are ready for 36, is that it?

CLERK: Yes, sir.

PRESIDENT: All right, on Select File which is agenda item 7 with LB 36. Proceed, Mr. Clerk.

CLERK: Mr. President, I have no amendments to LB 36. The bill was considered by the Legislature on February 24th on Select File. At that time it failed to advance.

PRESIDENT: Senator Schmit, do you wish to move the advancement of the bill then?

SENATOR SCHMIT: Mr. President, I move that LB 36 be advanced to E & R.

PRESIDENT: Any discussion on the advancement of the bill? Senator Cullan, what did you....you request a machine vote? All right, machine vote has been requested. So the motion is