

PRESIDENT: Speaker Marvel, shall we recess for just a short while and then I think we only have about one more bill that has come in? About ten minutes? We will stand in recess until about...no, we had better not recess, just at ease. Yes, because we don't want to recess for that short period of time. We will be at ease then for about ten minutes. The Chair recognizes Speaker Marvel.

SPEAKER MARVEL: I would like to make my daily speech and that is that we are stalled now once again. We have got bills that are about ready to come out of the bill drafter's office. We can not do a thing with them until you sign them and put them on the Clerk's desk. So those of you who have legislation that is ready to be processed, will you please give them to the Clerk and if necessary, contact the bill drafter and urge them to get the bills out too. We have got to get the bills out so that they can be referred so that they can then proceed on their normal path and we are helpless unless you can get your bills out and get them signed.

PRESIDENT: All right, we will now stand at ease for ten minutes which will be about twenty minutes till eleven.

EASE

PRESIDENT: The Legislature will come back to order. The Clerk will continue reading new bills. Would those of you who desire to have any bills introduced this morning had best get them in because we are going to adjourn rather soon. So I would urge you to get them to the Clerk's desk at once, otherwise we are going to adjourn.

CLERK: Read LB 92-98 by title for the first time as found on pages 117-118 of the Legislative Journal.

PRESIDENT: One more, if there are any more to bring up to the Clerk's desk, bring them up right now. I have been advised if you would like to have your bill be number 100, get up here quickly. We are offering all kinds of inducements to bring them up at this time. We can't offer any discounts though.

CLERK: Read LB 99 and 100 by title for the first time as found on page 118 of the Legislative Journal.

PRESIDENT: Are there any other bills? We have got a couple more here and then I will call on Speaker Marvel to have a few words.

CLERK: Read LB 101 by title for the first time as found on page 118 of the Legislative Journal.

January 16, 1981

LB 95, 247-283

Mr. President, Senator Schmit would like to have a meeting of the Ag Committee underneath the North balcony now if he could, and it is Ag Committee underneath the North balcony with Senator Schmit, immediately if possible.

PRESIDENT: The Legislature will be at ease until Speaker Marvel determines that we will go back.

EASE

PRESIDENT: The Legislature will come to order just for the purpose of the Clerk reading some matters into the record. Mr. Clerk, you may proceed.

CLERK: Mr. President, Senator Clark would like to announce that Senator Goodrich has been selected as vice chairman of the Telecommunications Committee.

Mr. President, new bills. Read LB 247-265 by title as found on pages 205-209 of the Legislative Journal.

Mr. President, your committee on Appropriations gives notice of agency hearings for Monday, January 26, signed by Senator Warner as chairman.

PRESIDENT: The Legislature will continue to stand at ease until approximately 11:15 a.m.

CLERK: Meet in Room 1517 at eleven o'clock? The Executive Board in Room 1517 at eleven o'clock.

PRESIDENT: The Legislature will come back to order. The Clerk has some matters to read in.

CLERK: Mr. President, I have a reference report referring LB 172-205 and rereferring LB 95. (See page 213 of the Legislative Journal.)

Mr. President, I have new bills. (Read by title, LB 266-283 as found on pages 214-218 of the Legislative Journal.) Mr. President, that is all the matters that I have this morning.

PRESIDENT: Any other messages on the desk, Mr. Clerk?

CLERK: No, sir, I have nothing further.

PRESIDENT: In that case the Chair will recognize Speaker Marvel.

SPEAKER MARVEL: I move we adjourn until Monday, January 19, 1981, at 10:00 a.m.

March 23, 1981

LB 95, 167

Senator Kahle. (Read title.)

SPEAKER MARVEL: Would you please cooperate with us. We are starting on a rather ambitious program and we do need your cooperation. The noise is so great out there we can't hear what is going on. Would you please help by cutting down on the oratory, or on the discussion? Okay, Senator Kahle. Senator Kahle, it is the A bill now.

SENATOR KAHLE: Mr. Speaker, the A bill that would go along with this, and I said before I am sure it will be held up when it gets to Select File....or to Final Reading, calls for \$2,590,000 this year and a guess of about \$6 million by the end of the third year. And, of course, there is no use to fool yourself when we...if the state takes over this part of the cost, it's going to cost some money. So this is the A bill that to the best of knowledge of the fiscal staff is what it is going to take. So I move the A bill be advanced and hope you will support it too.

SPEAKER MARVEL: The motion is the advancement of 39A. All those in favor vote aye, opposed vote no. We are voting on the A bill. Record the vote.

CLERK: 27 ayes, 4 nays on the advancement of the A bill, Mr. President.

SPEAKER MARVEL: The Clerk will read LB 167.

CLERK: Mr. President, excuse me, if I may, I would like to read in a couple of items. Public Health and Welfare sets hearing for gubernatorial appointments. (See pages 1062 and 1063 of the Journal.) Public Health and Welfare reports LB 95 to General File with amendments. (See page 1062 of the Journal.) (Signed) Senator Cullan as Chair.

Mr. President, LB 167 was a bill introduced by the Revenue Committee and signed by its members. (Read title.) The bill was read on January 14, referred to the Revenue Committee. On February 11 of this year the Legislature considered LB 167 and at that time the committee amendments and an amendment offered by Senator Burrows to the committee amendments was adopted. I now have pending a series of amendments, Mr. President. The first is by Senator Wesely. Senator Wesely moves to amend LB 167 by striking the Burrows amendment and reinstating the 15 percent interest rate.

April 16, 1981

LB 95

CLERK: Mr. President, LB 95 was introduced by Senator Cullan. (Title read.) The bill was originally read on January 12 of this year, referred to the Public Health and Welfare Committee. The bill was advanced to General File, Mr. President. There are committee amendments pending.

PRESIDENT: The Chair recognizes Senator Cullan for purposes of discussing committee amendments.

CLERK: Senator, they are on page 1062 of the Journal.

SENATOR CULLAN: Mr. President, members of the Legislature, the committee amendments to LB 94 do a couple of things. The first thing that the committee amendments do is strike the first fourteen sections of LB 95. We are distributing to you now a list of the changes in the Mental Health Commitment Act that are proposed in LB 95. The first fourteen sections had to do with changing the jurisdictions for not guilty by reason of insanity, individuals who have been found not guilty by reason of insanity in the court system. We have stricken from the bill all of those sections dealing with the not guilty by reason of insanity plea and those changes which we do support which are very similar to the provisions of LB 95 are being handled in the LB 213 sponsored by Senators Pirsch, Hoagland and Hefner. The other changes that are contained in the committee amendments to LB 95 are more technical in nature. It provides that the committing mental health board of the judicial district will be notified upon release of a committed person. The provisions dealing with jailers in the Mental Health Commitment Act are clarified. It is provided that the mental health board must hold a hearing following the release of persons under the mentally disordered sex offender act. Appointments to the mental health boards are modified. The state, rather than the counties, will pay for medication under the act. Under the first draft of LB 95, indigents, mentally ill individuals who are indigents, will have medications paid for. In the first draft the counties paid for those medications. In this draft the state picks up the bill for those medications. The standard for hearings for those who have been released under the mentally disordered sex offender act is clarified as well as the time for supervised release. Those basically are the committee amendments. The major substantive committee amendment, I suppose, is the one that deals with having the state rather than the counties pay for medications for those individuals who are indigents and need those medications. With that I would urge you to adopt the committee amendments to LB 95.

April 16, 1981

LB 95

PRESIDENT: Any further discussion on the committee amendments? The Chair recognizes Senator Kahle.

SENATOR KAHLE: Senator Cullan, would you clarify your statement about picking up the county part and is that in the A bill?

SENATOR CULLAN: Excuse me, Senator, I didn't hear your question.

SENATOR KAHLE: You mentioned the state picking up a certain amount of funds that the counties are now paying, does the A bill cover that that you have in here?

SENATOR CULLAN: It will be in the medication and the shift in funds is only for medications not for treatment. The committee found over the course of the two year study that we did on the Mental Health Commitment Act that many of the problems that we are experiencing with individuals that are being recirculated through the system is that individuals do not stay on the medications, the treatment plans provided for them in the facilities from which they are released and so we felt that those individuals who could not afford these medications should have government pay for them. And so we felt after the committee hearing, the state was in a better position to pay for those medications than would be the counties and that will be included in the A bill to LB 95. At this point in time, Senator, I can't tell you exactly what that fiscal impact is.

SENATOR KAHLE: So #7 of the pink slip that is along with 95 has a figure of a grand total of \$6,251. It does not include that then or does it include it?

SENATOR CULLAN: No, it would not and I do not believe it would include that committee amendment and I don't have at this point in time on the top of my head any idea as to what those medications costs would be but I can obtain those for you, Senator.

SENATOR KAHLE: Okay, thank you.

PRESIDENT: The Chair recognizes Senator Stoney.

SENATOR STONEY: Mr. President, a question of Senator Cullan if he would respond please.

PRESIDENT: Senator Cullan, will you respond?

SENATOR CULLAN: Yes, I would.

April 16, 1981

LB 95

SENATOR STONEY: Senator Cullan, under the first point defining the committee amendments, we are making a shift from the present board makeup established through the counties now to judicial districts. Can you provide the rationale why that change was made?

SENATOR CULLAN: Okay, Senator, in the...that is actually not pertaining to the bill itself, I mean to the committee amendments, that pertains to the bill but the rationale is that there are a number of smaller counties in the State of Nebraska which have mental health commitment boards and have trouble finding individuals to serve on those. For example, Grant County with a population of 1,000, there is no reason that they can't use the same mental health commitment board that is in Box Butte County because that is where the professionals come from anyway. There is not an attorney in Grant County, for example. One member of the mental health board must be an attorney. So that is one reason. The second reason is that we are concerned about the differences in procedures and practices which are used by mental health commitment boards across the state. In the survey that we did of all of the mental health commitment boards in the state and of public defenders and county attorneys, we found a very significant difference between how formal those procedures were, for example, in Omaha as compared to some other mental health commitment board in a smaller county and we are concerned that some of these counties may not be following the due process procedures as closely and as accurately as we should, and if we reduce the number of boards, then we can provide some more intense training for these individuals who are on these boards so that they know exactly what they have to do to meet due process requirements as far as commitments are concerned. So we think it will make the system considerably more manageable by reducing the number of individuals involved and allowing us to provide some good training.

SENATOR STONEY: Thank you, Uncle Sam.

PRESIDENT: Is there any further discussion on the committee amendments to LB 95? The Chair recognizes Senator Cope.

SENATOR COPE: Mr. President, members, a question of Senator Cullan please.

PRESIDENT: Senator Cullan, will you respond?

SENATOR CULLAN: Certainly, thank you.

SENATOR COPE: Senator Cullan, on the committee statement on

April 16, 1981

LB 95

the back of the page, there is fourteen items. Now are those the sections that are being excluded?

SENATOR CULLAN: Those fourteen items are a description of the bill itself. Those fourteen items are what is a brief summary of what LB 95 does. It doesn't reflect the committee amendments.

SENATOR COPE: I see. In other words, that is what the bill is as amended?

SENATOR CULLAN: Right.

SENATOR COPE: Now the next question, could you tell me just briefly the difference, say, on sex offenders, and I suppose probably disordered sex offenders to make it more explicit, what is the difference now or would be if the bill was passed in comparison as to how it is handled now after, say, the sentencing review board make their decision and how it is handled?

SENATOR CULLAN: Okay, Senator Cope, we do just two things. This bill changes the current mentally disordered sex offender law in only two situations. It provides for a probationary release, and I believe the term in the bill is two years. The other thing that we do in this bill is provide that the records from that process for the mentally disordered sex offenders will be sent to the county mental health board when that mental health board is considering the case of that mentally disordered sex offender. So we are really just trying to make the two systems mesh by insuring that the county mental health commitment board does indeed have those records but we are not changing the process for mentally disordered sex offenders at all. That was in the jurisdiction of Senator Nichol's Judiciary Committee. We are just trying to insure that when they move into the civil area as far as the Mental Health Commitment Act is concerned that they have those records and can make decisions based upon that previous history.

SENATOR COPE: Thank you.

PRESIDENT: Any further discussion on the committee amendments? Senator Cullan, you may close on the committee amendments. No close, closing is waived. So the question before the House is the adoption of the committee amendments to LB 95. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 28 ayes, 0 nays on adoption of the committee amendments, Mr. President.

April 16, 1981

LB 95

PRESIDENT: Motion carries and the committee amendments are adopted. Now, Senator Cullan, would you explain the bill?
Senator Cullan.

SENATOR CULLAN: I believe we have another amendment pending on the bill.

PRESIDENT: Is there another amendment, Mr. Clerk?

CLERK: Mr. President, Senator Cullan moves to amend the bill.

PRESIDENT: All right, the Cullan amendment. Senator Cullan.

SENATOR CULLAN: Mr. President, this is the amendment which was distributed to you previously. The amendment does two things. The first amendment makes a number of technical procedural changes in the bill and it also streamlines the procedure for the medications that we were talking about earlier. The current procedure is that most of these individuals receive their prescriptions actually from the regional center pharmacies and that is the most economical way for these individuals to receive these drugs. So this simply sets out in more detail what the procedure will be for these individuals, indigent individuals, who apply for prescriptions to have their medications filled by the State of Nebraska. The reason that we used the regional center pharmacy is that it is more economical and they already have the financial information and other information on these individual patients so that should reduce the paperwork. This amendment came to us from the Department of Public Institutions but it is consistent with the intent that the State of Nebraska pay for these medications for these indigent patients. The second amendment is a technical amendment which simply corrects a reference inside the bill so that we know...just a drafting amendment. I would urge you to adopt that amendment to LB 95.

PRESIDENT: Any further discussion on the Cullan amendment to LB 95? If not, I guess, Senator Cullan, that is your opening and your closing so the motion is the adoption of the Cullan amendment to LB 95. All those in favor vote aye, opposed nay. Have you all voted? The Cullan amendment. Record the vote.

CLERK: 25 ayes 0 nays on the adoption of the Cullan amendment, Mr. President.

PRESIDENT: Motion carries. The Cullan amendment is adopted. Any further amendments?

April 16, 1981

LB 95

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

PRESIDENT: Senator Cullan, you may go ahead and discuss the bill now.

SENATOR CULLAN: Mr. President, members of the Legislature, I appreciate your attention through the amendments and now I would like to briefly explain the bill. LB 95 is the product of a two year interim study conducted by the Public Health and Welfare Committee. The committee did an extensive survey of the mental health commitment boards in the State of Nebraska, all the county attorneys in the State of Nebraska, district judges in the State of Nebraska. We collected extensive data from the county...excuse me, from the district courts in the State of Nebraska as far as the operation of the current Mental Health Commitment Act is concerned. We identified a number of issues and we did several drafts of the bill. The draft that is before you now with the committee amendments is probably the sixth or seventh draft of the bill. The bill was circulated to mental health groups and individuals interested in mental health several times and there were two public hearings held on it and so I think it is probably one of the most carefully prepared pieces of legislation that I have had the opportunity to present to the Legislature as a result of the interim study work. The major changes are identified in the bill book on the back of the committee statement. All of the changes are apropos with the exception of #11 and that has been deleted from the bill. The main change, one of the major changes in the bill is that mental health commitment boards will be appointed on the basis of judicial districts rather than counties. We have discussed that with Senator Stoney a minute ago. The bill also clarifies that a jailer has the statutory authority to initiate an emergency admission certificate. We had felt that the jailer had that authority previously but it was not spelled out in statute so we simply clarified that. The Department of Public Institutions would be mandated to provide training for mental health board members. This should insure that due process procedures are followed consistently throughout the State of Nebraska and that all of these individuals who make these decisions are operating under the same similar knowledge and information so that our procedures will be more consistent from one part of the state to another. Under the present law, the county attorney may initiate mental health commitment proceedings against a person whom he or she believes is mentally ill and dangerous and in need of treatment. The draft legislation provides that the county attorney shall initiate these procedures. The treatment facility would inform

the mental health board as to all aspects of the treatment and supervision of persons receiving treatment. These reports would include time and location of periods the patient spends outside of the treatment facility. We have found in our studies that there is sometimes a serious lack of communication between the treatment facilities and the mental health commitment boards. So we are trying to insure that there is indeed more coordination and communication between those, the institution and the commitment board. The mental health board could hold a hearing to determine that persons released from treatment are taking medications as prescribed. Some counties, Douglas County, has been doing this for some years. The county attorney in Lancaster County believes that that is not an appropriate process and so they haven't been following that. They believe that that is not the...they don't have statutory authority to do that. So we are clarifying that that is indeed a reason that they can initiate the process again. #7 provides that when a mental health board holds a release hearing for the person who is a mentally disordered sex offender, the records of the sentencing review committee established under the Mentally Disordered Sex Offender Act shall be made available to the mental health board. In addition certain persons who have been treated under the mentally disordered sex offender legislation may be released subject to supervision as determined by the mental health board for a period of up to two years. The mental health board shall be notified seven days prior to release of any person committed by that board. This again is to insure that there is more communication. Sometimes these individuals are released considerably early, earlier than the mental health commitment board feels is appropriate and this would allow the mental health commitment board to initiate a process before release to see if that release should indeed occur. #10 is that we provide that indigent patients shall receive medication and we have already discussed that. #12, it is clarified that the Department of Institutions does not have the authority to release persons without notifying the mental health board. We have had some cases where an individual has been sent to the custody of the Department of Institutions and very shortly thereafter they are released and the mental health board does not even know that those individuals have been released. So we are clarifying that that notification must indeed occur. #13, we have eliminated the preliminary hearing. I distributed to you earlier a sheet that shows you exactly what the process is. In the current process, and this is the current process, there is a preliminary hearing to establish probable cause, and then what we are doing is

eliminating that preliminary hearing. Many of the individuals we talked with felt that the preliminary hearing was unnecessary and that it was simply an additional expense in the process and really didn't do anything to protect the rights of the individual who might be committed. So we are moving from two hearings to one hearing and so I think that that will be an economy but it will also...the procedure still obviously is one I think that protects the rights of the individual who may be committed. #14 provides that immunity from prosecution is given to all treatment facility staff when they accept committed persons. Currently this protection is given by statute only to employees of the Department of Institutions. There are cases when an individual could be committed to a facility not operated by the Department of Institutions, for example, a local community based mental health facility, and so that clarifies that that same immunity will be extended to those employees. That briefly is Legislative Bill 95. I would be happy to respond to any questions and I would urge you to advance the bill.

PRESIDENT: Before we have the next speaker, the Chair would like to introduce some students from...fourth grade students from Ralston, Nebraska, Maywood and Seymour Schools, 23 students, 5 adults and Joan Breen, the teacher from Maywood, and 28 students, 5 adults and Wilma Larson, the teacher from Seymour School. They are up here in the North balcony. Would you welcome these students, the adults and the teachers? Welcome to your Unicameral. The Chair recognizes Senator Wesely.

SENATOR WESELY: Mr. President, members of the Legislature, I rise in support of LB 95. As a three year member of the Public Health Committee, I can echo Senator Cullan's comments about the time we put into this legislation. We did spend a great deal of time over the interim two years ago looking at the situation. You recall at that time the controversy that arose because of the release of a number of individuals from some of our institutions. The feeling was, of course, that the time was not right to move on that issue with the emotion so high. So we continued the study this last interim and spent a great deal of time again looking at the situation, further refining the legislation, and now have before you an amended LB 95 which I think deals with many of the concerns that many people in the State of Nebraska have as to our Mental Health Commitment Act. I think one of those concerns that I can express is the fact that we have released people from our mental institutions that I believe should have been...we should have notified the mental health boards, we should have notified local

police authorities, we should have let people know what was happening in these instances much more than we did. DPI has, for instance, decided with their counsel's authority that they no longer have to notify the mental health board which committed an individual when they are about to release that individual and that seems to me to be very unwise and I think this change in the law alone is enough to warrant its approval. But I have heard of cases at the Lincoln Regional Center where an individual has been sent to the Regional Center by police. He was convicted of a crime, found to be mentally ill. That person was in the Regional Center and then released and no one was notified of it, no one was notified, and yet this person had been taken into custody because of a crime he had allegedly committed. And so we have a situation then where the police had to track this person down again and take him into jail because he had gotten over his mental illness through the Regional Center's activity and had to bring him back into jail and then convict this person of that crime. Well, that seems to me to be a very ridiculous situation to be in, where someone has committed a crime, the police have taken him into custody, he needs help because he is mentally ill, they take him to the Regional Center and the Regional Center takes care of him and then puts him back out on the street again without notifying the mental health board or the police or anybody who brought him in in the first place so that his original circumstances can be dealt with. That change is very important to the bill. I think that another change that is important to Lincoln, particularly, is the question about the jailer having the authority to have emergency admissions to the Regional Center. We have had situations in the City of Lincoln where again people have been taken into custody for disorderly conduct. They are obviously mentally ill. Something has happened to them. They need immediate attention. They are dangerous. They are put into a strait jacket and they are taken to the Regional Center and they don't have any room for them and the jailer can't commit them formally and so they are in the back of a cruiser, a police cruiser, and going around the City of Lincoln for several hours, and finally a hospital will take them in. This has happened more than...well, this has happened more than once and this in the last year I would say there are a number of times when situations like this have arose in the city and certainly we should give the jailer the authority when this person is obviously mentally ill and has need of immediate attention should have the right to take them to the Regional Center and get attention for them. Beyond that there are a number of other changes in the bill that again deal with the public's concern about the fact that people

April 16, 1981

LB 95

are not released without letting people know about their circumstances, that we have a situation where people should be placed in the regional centers and it is so difficult in some cases to do that because of the restraints that we have in the process. This I think loosens those restraints somewhat but still protect the individual rights of the individuals who are trying to be committed. So I think this bill strikes a balance and the way I would see it is this. We had a situation where we were so easy to commit somebody for mental illness that it was violating their constitutional rights. With this change by the law, by the constitutional decisions, we went to another extreme...

PRESIDENT: About a minute, Senator Wesely.

SENATOR WESELY: Thank you, Mr. Speaker. We went to the other extreme where it was so difficult to commit and then so easy to release and I think we went too far the other way. This will bring us back toward the middle where we strike that balance between upholding the constitutional rights of the individual involved, and at the same time protect the public from these mentally ill individuals and I think that is the balance we want to strike protecting the constitutional rights of the individuals under the commitment act, but at the same time protecting the general public's safety and I think that is why this bill was introduced and that is why it is important to be passed.

PRESIDENT: Before we call on the next speaker, I would like to introduce some more friends and visitors, from Senator Koch's District, the Delehantes from the Rockbrook area. They are up in the South balcony. Would they be recognized, and "Welcome to your 'Unicameral to the Delehantes'". The Chair recognizes Senator Fowler.

SENATOR FOWLER: Senator Sullivan, I have a few questions on some of the changes within the bill. One of the concerns in the original Mental Health Commitment Act was that people had been committed under emergency procedures but were in an institution for a long time before they were able to have a hearing to determine whether or not they should be committed and that is one reason we had the preliminary hearing to establish whether there was probable cause that someone should be put in an institution. By eliminating the preliminary hearing, what is the maximum length of time between the time a person is picked up and put into a mental institution and the time that they would be able to have a hearing to determine whether

or not they should have been there?

SENATOR CULLAN: The absolute maximum time would be ten days. Under current statutes it is five days, a preliminary hearing must be held within five days, and so this stretches it to ten days. If the individual who is subject to the hearing feels that they cannot adequately prepare their defense in that period of time, then they can ask for a continuance and so at their own request to prepare their own defense they could be held longer than ten days but the maximum that they can be held without their own request is ten.

SENATOR FOWLER: Okay, so they could be in and the county attorney determines whether they should be placed in the institution, initially?

SENATOR CULLAN: That is correct. The county attorney would make that initial determination as to whether or not they should come in with the process.

SENATOR FOWLER: And it could be ten days before any mental health professionals decide whether or not they should be in an institution?

SENATOR CULLAN: No, that is not correct. It would be thirty-six hours before a mental health professional would have to make some kind of determination that they would be held so the most that a county attorney could submit them for would be thirty-six hours.

SENATOR FOWLER: And then a professional...?

SENATOR CULLAN: A professional would have to be involved after thirty-six hours.

SENATOR FOWLER: Thirty-six hours, okay. On the release, the seven days notification prior to release, if the institution decides to release someone and seven day notice is given, how much time then after that seven days does a mental health board have to decide, let's say they decide to have a hearing, how soon do they have to have that hearing?

SENATOR CULLAN: There are no restrictions in the statute. They do not have to have a hearing upon release. That is optional.

SENATOR FOWLER: Okay, let's suppose they choose to have a hearing.

April 16, 1981

LB 95

SENATOR CULLAN: All right, there is no restriction on when that hearing would be held.

SENATOR FOWLER: Okay, can that person be released anyway?

SENATOR CULLAN: That person can be released anyway, that is correct.

SENATOR FOWLER: So the release does not wait for that second hearing?

SENATOR CULLAN: No, they will be released within seven days unless the mental health commitment board initiates another hearing, and so if the mental health commitment board initiates another hearing within that seven days, then the process starts all over again.

SENATOR FOWLER: Okay, but the person can still be released, correct?

SENATOR CULLAN: That person will still be released.

SENATOR FOWLER: Okay. On the question of whether or not a person is conforming with the taking of medication. Suppose an individual chooses to stop taking the prescribed medication and suppose that there are no problems with their behavior, okay, they stop taking the medication and in fact they may not need to be taking the medication any more. Is the only, let me see if I can phrase this right, can they be re-committed simply because they chose not to take the medication?

SENATOR CULLAN: Absolutely not. That would be forcing an individual to take medication. The same standard must always apply and that is that the individual must be mentally ill and dangerous. The fact that they have stopped taking their medication is simply justification for the mental health commitment board to begin the entire process again but it is not justification or a basis of committing that individual.

SENATOR FOWLER: Okay, so if a person's behavior is not dangerous to themselves or to others, even if they chose not to follow the treatment plan, they would not be committed, is that correct?

SENATOR CULLAN: Absolutely. An individual under this bill or to meet with the constitutional requirements can only be committed civilly if that individual is mentally ill and dangerous, and simply not taking your medication is not sufficient reason to commit a person. They still have to exhibit those tendencies, mentally ill and dangerous.

April 16, 1981

LB 95

SENATOR FOWLER: Okay, thank you, Senator Cullan.

PRESIDENT: The Chair recognizes Senator Kremer.

SENATOR KREMER: Mr. Chairman, I was going to ask Senator Cullan the question because I did not understand exactly what authority was given to the jailer but Senator Wesely explained it so I do understand so I will not ask my question. Thank you.

PRESIDENT: All right, the Chair recognizes Senator Maresh.

SENATOR MARESH: Mr. President and members of the Legislature, I don't want to be redundant. A lot has been said on the work that went into this but I would like to say that the staff should be complimented for all the work they did on this. Gina Dunning worked hard to get all the details worked out and we held hearings in Omaha, Lincoln, Alliance and I don't think this is the complete answer but I think we are going in the right direction to try to resolve some of the problems that we have now. So I hope that you folks vote to advance this bill.

PRESIDENT: The Chair recognizes Senator Higgins.

SENATOR HIGGINS: Question.

PRESIDENT: I believe we have reached the point where we don't need to call for it because I think we are ready for closing, so, thank you. Senator Cullan, we are ready for closing, if you will.

SENATOR CULLAN: No close, Mr. President, other than to say that I believe that the intent of this legislation is definitely to insure, and I want to make sure that to reaffirm the question that Senator Fowler raised, that an individual still must exhibit those tendencies of being mentally ill and dangerous before that individual can be committed and we are not changing in any way that standard and I wanted to make that clear for the record. With that I would urge you to advance LB 95.

PRESIDENT: Motion to advance LB 95 to E & R Initial. All those in favor vote aye, opposed nay. Record the vote.

CLERK: 27 ayes, 0 nays, Mr. President, on the motion to advance the bill.

PRESIDENT: Motion carries and LB 95 is advanced to E & R Initial. Before we go to the next bill, we have under the

April 23, 1981

LB 35, 95, 132, 173, 266, 266A,
360, 477, 506, 541, 545
LR 57, 58, 59, 60

SPEAKER MARVEL PRESIDING

SPEAKER MARVEL: The opening prayer will be given by Pastor Orin Graff, United Presbyterian Church, North Bend, Nebraska.

PASTOR GRAFF: Offered prayer.

SPEAKER MARVEL: Roll call. Would you please record your presence. Record.

CLERK: Quroum present Mr. President.

SPEAKER MARVEL: Do you have any items you want to

CLERK: Mr. President, a communication addressed to the Clerk regarding LB 173. Letter appears on page 1527 of the Legislative Journal.

Mr. President, your committee on Enrollment and Review respectfully reports they they have carefully examined LB 95 and recommend the same be placed on Select File with amendments, 541 Select File, 360 Select File with amendments, 506 Select File with amendments, 266 Select File with amendments, 266A Select File, 545 Select File with amendments, all signed Senator Kilgarin, Chair.

Mr. President, your committee on Enrollment and Review respectfully reports that they have carefully examined engrossed Legislative Bill 35 and find the same correctly engrossed, 249 correctly engrossed, 477 correctly engrossed and LB 132 correctly re-engrossed. (Signed) Senator Kilgarin, Chair.

Mr. President, a new resolution LR 60 by Senators Koch and Wagner. Read LR 60. That will be laid over.

Mr. President, finally LR 57, 58 and 59 are ready for your signature.

SPEAKER MARVEL: While the Legislature is in session and capable of transacting business, I am about to sign and do sign LR 57, LR 58, and LR 59.

We have some guests visiting us today and before we get started on other business, from Sidney, Australia underneath the north balcony visiting the Legislature today, Mr. Mon Khamis, will you please stand so that we can recognize you.

May 4, 1981

LB 334A, 95, 376, 499,
559

Any discussion? All those in favor signify by saying aye, opposed nay. LB 334 A is advanced to E & R for engrossment. We will now go back to LB 11.

CLERK: Mr. President, I now have pending on LB 11 the...well, Mr. President, if I may right before that, Senator Von Minden would like to print amendments to LB 559; Senator Landis amendments to LB 499; and Senator Barrett amendments to LB 376; and Senator Fowler to LB 95.

SPEAKER MARVEL PRESIDING

May 6, 1981

LR 112, 113
LB 146, 95

SPEAKER MARVEL: The motion is the adoption of the Hoagland amendment to 146. All in favor of that motion vote aye, opposed vote no. Have you all voted? Senator Hoagland.

SENATOR HOAGLAND: In order to save time, why don't I just ask for a Call of the House and a roll call vote now because I think we are going to need one eventually in any event.

SPEAKER MARVEL: Okay, the first issue, shall the House go under Call? All those in favor vote aye, opposed vote no. Record.

CLERK: 18 ayes, 4 nays to go under Call, Mr. President.

SPEAKER MARVEL: The House is under Call. All legislators return to your seats, record your presence. Senator Sieck, will you record your presence please? Senator Newell, will you record your presence please? Senator Barrett, Senator Lowell Johnson, Senator Maresh, please record your presence. Senator Richard Peterson. Senator Hoagland, Senator Cullan and Senator Haberman are excused. Senator Barrett, Senator Lowell Johnson and Senator Warner.

SENATOR HOAGLAND: Why don't we go ahead, Mr. Speaker. It is fine with me.

SPEAKER MARVEL: Okay.

CLERK: (Roll call vote taken. See page 1795, Legislative Journal.) 17 ayes, 25 nays, Mr. President.

SPEAKER MARVEL: Motion lost.

CLERK: Mr. President, I don't believe I have anything further on the bill.

SPEAKER MARVEL: Senator Kilgarin. Senator Wesely, do you want to advance the bill? The motion is the advancement of the bill. All those in favor vote aye, opposed vote no. Have you all voted? Record the vote.

CLERK: 36 ayes, 0 nays, Mr. President, on the motion to advance the bill.

Mr. President, Senator Cullan would like to print amendments to LB 95 in the Journal.

New study proposals, LR 112 by Senator Haberman calls for a study of the statutory offense of driving while intoxicated and the penalties for first, second and subsequent offenses. LR 113, a study, by Senators Fenger and R. Peterson. The purpose of the study is to examine the administra-

May 7, 1981

LR 119, 120, 121
LB 389

Remmers voting yes. 25 ayes, 14 nays, Mr. President, on the motion to advance the bill.

SPEAKER MARVEL: The motion is carried. The bill is advanced. The next bill.

CLERK: Mr. President, if I may right before that a few study resolutions. LR 119 introduced by Senators Vickers, DeCamp and Von Minden, regarding the implementation of LB 35. LR 120 offered by Senators Labedz, Sieck, Higgins, Pirsch, Howard Peterson and Carsten, the purpose of the study being to research the desirability of limiting the number of bills either by constitutional amendment or by legislative rules that a Senator may introduce. LR 121 offered by the Constitutional Revision and Recreation Committee. The purpose of the study is to research the desirability of amending the Constitution to change the minimum number of Senators allowed from fifty to sixty. (See pages 1825 through 1827 of the Legislative Journal.)

May 7, 1981

LB 95

CLERK: Mr. President, LB 95, there are E & R amendments pending, Mr. President.

SPEAKER MARVEL: Senator Kilgarin.

SENATOR KILGARIN: I move the E & R amendments to LB 95.

SPEAKER MARVEL: The motion is the adoption of the E & R amendments to LB 95. All those in favor say aye. Opposed no. Motion is carried. The E & R amendments are adopted.

CLERK: Mr. President, Senator Fowler now has an amendment to the bill.

SPEAKER MARVEL: Senator Fowler.

CLERK: It is Request 2361, Senator.

SENATOR FOWLER: I think I want to withdraw that one and go with the one that is printed in the Journal.

CLERK: All right. Mr. President, Senator Fowler now has an amendment to the bill that is found on page 1706.

SPEAKER MARVEL: Senator Fowler.

SENATOR FOWLER: These are amendments that I visited with Senator Cullan with in following the admonition of the Speaker to try and keep dissension to a minimum. I guess I would like not to move all the amendments that I have up there, Pat. I would like to move what would be...I would move everything but number one, move two, three, four and five.

CLERK: Okay.

SENATOR FOWLER: Is that acceptable?

CLERK: Well, yes, Senator, technically you will withdraw this one and I will just redraft it.

SENATOR FOWLER: Okay, I will withdraw that....

CLERK: Okay.

SENATOR FOWLER:and wish to resubmit number two, three, four and five from that amendment.

CLERK: Okay, thank you.

May 7, 1981

LB 95

SPEAKER MARVEL: Okay, the motion is on the Fowler amendment as discussed. Okay, Senator Fowler, do you want to....do you have any more background information you want to give?

SENATOR FOWLER: Sure, if people want it. The bill... on page 1706 of the Journal are the amendments. The first amendment, I am not moving, the rest I am. Now this is the mental health commitment act. It deals with the placement of people in mental institutions. The primary concern that I have with the bill is the length of time that someone can be in an institution before there is an actual formal hearing as to whether or not they should be committed. Now originally I suggested shortening the time from ten days to seven days. Senator Cullan felt that ten days between the initial commitment and the final hearing was necessary. So I am dropping that change, but I do think that maybe some protection should be provided with regards to that. One is that a second opinion...the amendments call basically for a second opinion with regards to commitment, rather than just one mental health professional reviewing someone, that there should be two professionals review the person after they are placed in the institution. So that is one of the first things. That is amendment number two and three. The third amendment clarifies... or the next amendment clarifies language with regards to access to legal counsel and it's not really any sort of major change from the intent of the legislation but just indicates that there will be legal counsel granted as soon as possible when a person is put in a mental institution. And the fourth deals with the new language that Senator Cullan has with regards to recommitment, and that indicates that to be recommitted a person must demonstrate dangerous behavior, which I think was Senator Cullan's intent anyway when I asked him on General File. This just spells it out more specifically. So I think Senator Cullan is willing to go along with the amendments that I am offering. There were some other changes that I wanted to make, but in interest of expediting the process, I am dropping those suggestions and going with the four that are rather minor changes, I believe, in the bill.

SPEAKER MARVEL: Senator Cullan.

SENATOR CULLAN: Mr. President and members of the Legislature, I support the Fowler amendments. I think that they clarify for the purpose of interpreting LB 95 what was previous the intent with the exception of the

amendment requiring two professionals rather than one to be in to making the determination as to whether or not, and advising the County Attorney in the process. I see no major objection to that portion of the Fowler amendment either, and so, therefore, I would urge you to adopt the Fowler amendment.

SPEAKER MARVEL: Okay, the motion is the adoption of the Fowler amendment to the bill. All those in favor of that motion vote aye, opposed vote no. Record the vote.

CLERK: 26 ayes, 0 nays, Mr. President, on adoption of the Fowler amendment. Mr. President, Senator DeCamp has an amendment but he is not in the Chamber. And I have one after that. Mr. President, Senator Cullan moves to amend the bill and that is found on page 1803 of the Journal. 1803, I'm sorry.

SPEAKER MARVEL: Senator Cullan.

SENATOR CULLAN: Mr. President and members of the Legislature, I would like to review this amendment for you briefly. This amendment makes some technical changes in the section that provides for conditional release of individuals who are mentally...who were formerly held under the mentally disordered sex offender act, and now we transfer jurisdiction under the Mental Health Commitment Act after their sentence is terminated so that they would be under the jurisdiction of the Mental Health Board which, of course, is civil in nature. All the intent of this amendment is to clarify that the standard which applies when these individuals are held following the termination of their sentence is the civil standard of mentally ill and dangerous and not the sex offender standard, and so with that technical change, I think that was already clear but we are simply making it more clear that the appropriate standard is the mentally ill and dangerous standard for that period of time after these individuals are out of the mentally disordered sex offender statute...or jurisdiction of that statute. So with that I would urge you to adopt this amendment to section 44 of LB 95.

SPEAKER MARVEL: Senator Chambers, do you wish to speak to the Cullan amendment?

SENATOR CHAMBERS: Mr. Chairman, I want to ask, while I have this opportunity, Senator Cullan a question about the bill because we are trying to keep debate to a limit

May 7, 1981

LB 95

and I understand that. Senator Cullan, is there a provision in the bill which would make its conditions of additional restriction on various people apply to some people who are in custody right now?

SENATOR CULLAN: I don't think I understand your question, Senator Chambers.

SENATOR CHAMBERS: Well, I had read things in the newspaper that this bill was passed with Cribbs and some other individual contemplated, and that it limits the conditions under which such people can be released. It places restrictions on them which are not on them right now under the law.

SENATOR CULLAN: I think you are talking about LB 213 rather than LB 95. This...213 deals with not guilty by reason of insanity, and any provision that formerly dealt with not guilty by reason of insanity under 95 has been stricken.

SENATOR CHAMBERS: Then I'm....thank you.

SPEAKER MARVEL: The motion is the adoption of the Cullan amendment to LB 95. All those in favor of the motion vote aye, opposed vote no. Record.

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

SPEAKER MARVEL: The motion is carried. The Cullan amendment is adopted.

CLERK: Mr. President, Senator DeCamp moves to amend the bill by striking Section 44.

SPEAKER MARVEL: Senator DeCamp.

SENATOR DeCAMP: Mr. President and members of the Legislature, this isn't any big deal but I do believe this section may have constitutional problems because of the Sullivan case. As I read the section, as I understand the case and so on and so forth, they said basically if you lock a sex nut up, then once he has served his time, he gets out, and this sets up kind of a system that I admire and agree with completely, but talks about letting somebody out from the Mental Health Board and then them revoking basically his right to be out, if he violates any of the conditions of such order. And I don't think they can lock him up without getting

May 7, 1981

LB 95

the complete proceedings done. They may say they are going to revoke it, but I don't think it would be effective. I think they would have to go through the mental health proceedings. And so I would urge you to strike the section unless Senator Cullan or some of the others have some compelling reason to keep it in or think it will work, because I do believe if you will check with the Attorney General maybe or analyze it yourselves, you will find it probably is unconstitutional and I think it might jeopardize the rest of the bill. So I urge you to at least examine it. I will only offer the amendment if you feel comfortable with it. If you don't, I will withdraw it and let you check it out yourself, whatever you think is right, but I think it's got a problem there. I had a lot better explanation for this but it's kind of complicated.

SPEAKER MARVEL: Senator Cullan.

SENATOR CULLAN: Mr. President, I, as always of course, appreciate Senator DeCamp's help, but being the inquisitive sort of person I am and not as well educated in the law and so forth as some people might be, I would appreciate, even though it may take a couple minutes, a more detailed explanation from Senator DeCamp as to what the constitutional problems with Section 44 might be. And so, Senator DeCamp, I would like to yield to you for a second, at least, some time so that you could educate me on what the real constitutional problems with this are.

SENATOR DeCAMP: Okay, I'll tell you what, give me five minutes and I will get it in terms that I can kind of explain it so it's something I could understand if it were explained to me, and I will do that if you will let me rest for five minutes and meditate.

SENATOR CULLAN: Well....(interruption).

SENATOR DeCAMP: Is that okay?

SENATOR CULLAN: Well, maybe you can visit with me about it later, but I am familiar with the....I guess I am going to rise at this point in time to ask you to oppose the DeCamp amendment. There is a potential for some discussion and some debate as to whether or not this particular section will withstand scrutiny. I think it will. I think it is clear that it will. This statute is based on a hybrid of the Illinois statute which provides for conditional release. It is different in

May 7, 1981

LB 95

that their conditional release is based upon...would occur after an individual sentence is completed. The conditional release...the important thing and the reason that I believe that this section is clearly constitutional, in my opinion, is that the standard is still the same. The standard is not guilty...or excuse me, the standard is mentally ill and dangerous, and as long as that standard is the same, I do not see any particular constitutional problem. I believe that Section 44 is one of the most important elements of the bill because it provides for an additional tool with which we can proceed to ensure that these individuals can be retained in the system. It is interesting to note that the first person who was released under the revised Mentally Disordered Sex Offender Act was recently convicted of molesting two children. I think that this conditional release might have prevented that child molesting because there could have been a great deal more scrutiny over this individual after he was released from the institution. And so I think this is an additional treatment tool, a tool the restrictions of which are based upon the same standard of mentally ill and dangerous. I believe that there are no constitutional problems with it. If it is challenged and if we lose it, the severability clause is in LB 95. I think it is worth the risk, and I think that we should see if this will stand the test. I believe it will.

SENATOR DeCAMP: As I understand it then, and you clarify this for me, this is a hold or conditional release the mental institution would have on an individual after they had completed the sentence. Is that correct? Is that correct? You are supposed to turn this thing on and he is supposed to say, that's correct. Is that correct?

SENATOR CULLAN: That is correct, Senator DeCamp.

SENATOR DeCAMP: Ah, see. Okay.

SENATOR CULLAN: But that is after the MDSO...(interruption).

SENATOR DeCAMP: Sentence is completed.

SENATOR CULLAN: That's correct.

SENATOR DeCAMP: Okay. Then I will explain my concerns and I am saying this for you, Sam, and I may be wrong but I wish you would check it out. There was a case that came down and I think you are more familiar with it than I am. You probably studied it. And it said basically,

you have a criminal sex offense, the judge orders a hearing, we find out if the person is a sex nut or whatever they are called these days. There is confinement on a criminal basis. The Nebraska Supreme Court then said, you must sentence him under the criminal laws and you can't keep him longer than the criminal sentence. Now you are saying, okay, Joe was moved over to the place where they put crazy people, mentally defective people, he has served his sentence and time. Now he is ready to go out and they still say, well, we want to keep control of him, so they give an order and say, okay, you can go out now if you do A,B,C,D,E. He gets out and he violates A. And they say, you have got to come back. And I am saying, no, even though it would be good to have him back. The Supreme Court has said once he has served that sentence he was free, he didn't have a parole system. He didn't have a control system, or whatever, that if you were going to confine him and have him held, you had to get him confined under something else so you did have that control and you are creating just an arbitrary or artificial control. As I say, I agree with what you are trying to do. I think you are doing it in a technically defective way, and I just alert you to it. And I am not going to make a big issue of it, but I would hate to jeopardize your bill because I think it is a pretty major part of the bill.

SENATOR CULLAN: I would like to respond again, Senator DeCamp, and I appreciate it. My guess is that a staff member who probably gave this to you...but at any rate the important distinction and the thing that you didn't seem to pick up on is that after the sentence is completed, you are not talking about a continuation of sentence, you are talking about a civil commitment based upon civil standards, and the individual must still be mentally ill and dangerous. And since that standard applies, I believe that you do not have constitutional problems because it is clearly not a continuation of a sentence. And for that reason I would oppose the striking of Section 44. It is a new experiment. It does give us additional tools, but I think it is constitutional.

SENATOR DeCAMP: Okay, but maybe I misunderstand, but he served his sentence and you haven't civilly committed him yet. Have you? Have you got a system where you have civilly committed him?

SENATOR CULLAN: That's the process. That is exactly what we are saying. Yes, he can be civilly committed.

SENATOR DeCAMP: I know he can be. I am saying that would

May 7, 1981

LB 95

be a good thing to do, but show me where it is done in here. How have you got him civilly committed yet to have the control? Do you see what I am saying at all?

SENATOR CULLAN: Yes, he is civilly committed under the section. This just says that rather than commit him to the institution, you are committing him on this type of conditional release.

SENATOR DeCAMP: I will withdraw the amendment, but...

SENATOR CULLAN: There is a civil commitment hearing and the full due process is...(interruption).

SENATOR DeCAMP: Well, they said I shouldn't withdraw it yet. Well, when you get tired of talking about it, then I will withdraw it.

SPEAKER MARVEL: Just a minute, I want to....before we proceed to the next speaker, there are guests of Senator Goll underneath the north balcony from Tekamah, Nebraska, Mrs. Lois Backer, Mrs. Joyce Peck, Mrs. Donna Palmer, and Mrs. Gordon Bryant, Jr. Will you folks stand so we can welcome you. Who is the next speaker? Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I agree with what Senator DeCamp has said. But I want to get one thing crystal clear on the record from Senator Cullan before I proceed. Senator Cullan, as the introducer of this bill, are you declaring for the record that this is one of the most essential portions of the bill and one of the main reasons you have for offering the bill?

SENATOR CULLAN: There are about seventeen different elements of the bill and this is an important element. One thing I would like to clarify if I could. Could I take a second, Senator Chambers?

SENATOR CHAMBERS: I don't have enough time because you get to close and you can deal then with it.

SENATOR CULLAN: Just a second....but there was a misunderstanding with Senator DeCamp and I will clarify it in closing.

SENATOR CHAMBERS: Okay. Members of the Legislature, when you have a bill and a court is construing it for purposes of determining constitutionality, if a provision which served as an inducement for the passage of the bill

is rendered or ruled unconstitutional, the bill falls. The court is not going to go in with a scalpel and excise a word here, a sentence there, a section over here, to try to come up with a hodgepodge. When those who deal with the bill will establish in the record that the unconstitutional portion served as an inducement for the passage of the bill, when that inducement for passage falls, the rest of the bill falls too. On this particular amendment, Senator Cullan says that there will be supervision of this person for a two-year period after he or she has served the term. But it doesn't say whether the person is on parole. So I have to ask a question. Senator Cullan, who does this scrutinizing or monitoring of this individual? Senator Cullan, who scrutinizes or monitors these individuals during the two years?

SENATOR CULLAN: The Mental Health Commitment Board.

SENATOR CHAMBERS: I meant the Board certainly doesn't have the power to go out and oversee this person. Are they going to have a staff like the Parole Board has to do this and keep in touch with these people?

SENATOR CULLAN: The Board can commit the individual to the Department of Public Institutions or a community based mental health program and monitor those commitments.

SENATOR CHAMBERS: Has the Parole Board said that they will accept these people as though they are parolees, when under the statutes establishing parole they are not?

SENATOR CULLAN: It has absolutely nothing to do with the criminal justice system. It has absolutely nothing to do with the Parole Board. They are committed under a civil commitment pursuant to Section 29-20, and the system is....Senator Chambers, the system....we are just providing an additional tool to the Mental Health Commitment Board. It is not parole....

SENATOR CHAMBERS: But here's what....

SENATOR CULLAN: It is not a continuation of a sentence.

SENATOR CHAMBERS:I am asking you, Senator Cullan, you are answering a question that I am not asking, and not answering the question that I am asking. If this person is on this conditional release, who are the employees of the Mental Health Board who will be monitoring

May 7, 1981

LB 95

these people in the way that if you look at the criminal justice system, there are parole officers to monitor the conduct of parolees. Who will monitor these people?

SENATOR CULLAN: That would depend upon how the commitment is...I suppose on whether the individual is committed to a regional center, supervision from the center to a community based program. There would be someone in the community mental health system.

SENATOR CHAMBERS: But you are not sure, based on the language of the bill.

SENATOR CULLAN: It depends....yes, I am sure. It depends on what individual...on what institution or what facility the individual is committed to under the Mental Health Commitment Act. And so I can't....it has to be a mental health facility.

SENATOR CHAMBERS: But when you say in your bill, such persons shall go at large, then that means they are totally free, right? Period...that portion of the bill.

SENATOR CULLAN: Excuse me, Senator Chambers, could you restate the question?

SENATOR CHAMBERS: When you say in line 8, such person shall go at large subject to such conditions and such supervision, go at large doesn't mean to be locked up in an institution. That means a circulated move like anybody else. So who is going to monitor this person while he or she is going at large?

SENATOR CULLAN: The community based mental health programs who are assigned jurisdiction....(interruption).

SENATOR CLARK PRESIDING

SENATOR CLARK: You have one minute left.

SENATOR CULLAN:over this individual who treat this individual during this period of time.

SENATOR CHAMBERS: Thank you. Members of the Legislature, I hope you can understand that this is an amendment which I don't even say has a laudible purpose. Maybe the introducer did, but I have to look at what the words are that are going to be put into the law. There is no structure established whereby these people will be monitored, and I agree with the arguments that Senator

May 7, 1981

LB 95

DeCamp made relative to the constitutionality of it. But I am trying to show you even some technical problems that exist here. And if the person should be kept under conditional release, why limit it to two years? If you think this person is going to continue to be a problem, why arbitrarily cut it off? Why not forever keep them under the scrutiny of this Board? I think this bill is a response to the hysteria abroad in this state on this particular issue. People who have not looked at the constitutional ramifications and probably don't even care are trying to get something through this Legislature to placate the public. But if the thing has gotten through and the public thinks something has been done and it turns out that it hasn't been....

SENATOR CLARK: Senator Chambers, your time is up.

SENATOR CHAMBERS:then another hoax will have been worked on the public. And Mr. Chairman....

SENATOR CLARK: Thank you.

SENATOR CHAMBERS:I am putting my light back on because I want to speak again.

SENATOR CLARK: I would like to introduce Mrs. Lyle McBride, the mother of Senator Pirsch, sitting under the south balcony. Will you stand and be recognized, please? Welcome to the Legislature. Senator Nichol is the next speaker.

SENATOR NICHOL: Mr. Chairman, just briefly, as I understand the situation, when you have a person incarcerated either civilly or criminally, I don't know that you can mix them together and keep them for some reason or another. I had always understood that once a person has served their crime, or have been cured mentally from the regional center, they have a right to go free. Now if we are going to keep them further than that, as I understand the problem here, we should have due process of law before we can continue to hold them. I certainly don't want to hold up your bill, Senator Cullan. Most of it I agree with. I do think this is one section that perhaps we ought to look at more closely.

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Thank you, Mr. Chairman, and I will try to say everything I have got to say, or at least

May 7, 1981

LB 95

enough of it to make it clear. You have heard Senator Nichol mention the due process considerations. You have heard Senator DeCamp mention the constitutional problems. I agree with both of them. But if you look at line 7, on page 30, you will see that the Mental Health Board may enter an order. When you have these kind of bills, you are setting up a situation which is condemned in so many other countries, especially the Soviet Union where they declare that somebody has a particular mental deficiency, and without any due process you just go ahead and lock that person away. Then you set up conditions with no guidelines in this bill saying that the conditions of this release which are to be set up have anything to do with the condition that the person is in. I think this is a very poorly drafted amendment. The thrust of it is poor, and when Senator DeCamp....I mean when Senator Cullan as a potential lawyer will admit that he has taken part of it from a law in one state and part of it from someplace else, he should know that if each one of the laws that he took it from would be able to stand by itself, that doesn't mean that by blending the two you have a constitutional proposition. The Senators ought to look at it very carefully, consider the ramifications and if there is a logic to what Senator Cullan is talking about, why in line 15 will he say that the supervision shall not exceed two years from the date of initial release? Just because we set a two-year limit, Senator Cullan, in the law doesn't mean that a person's mental problem or whatever it is you are trying to deal with, will arbitrarily and automatically end at the end of that two-year period. So I don't believe that this amendment does anything that is allowable in the law. We, in the Legislature, are supposed to stand firm for the integrity of the law and the principles of due process in the Constitution in the face of any amount of hysteria from the public. This is why laws are committed to writing and why constitutions cannot be changed by a legislative body because legislators are easily panicked. Those who are not panicked are easily driven along or pulled along by what seems to be the prevailing sentiment in the legislative body at that moment. They will not read the legislation. They will not take the time to analyze it because it happens not to fall within an area of their deep concern. So as a result, we run a lot of bad bills through. Then when the public says, you pass too many bad bills, the ones who voted for these bad bills will say, amen, amen, that's right, that's right, there are too many bad bills. Well this is a bad one that is being brought to our attention and we have the opportunity to

correct this provision in it. If Senator Cullan says that there are I forget how many other propositions in the thing that he wants, he should go ahead and forego this one, and get the rest of it. But there is no way in the world that I, with the understanding that I have of the law, the concern that I have about due process and the integrity of the Constitution, can vote for a hybrid like this. But instead of referring to it as a hybrid which is a nice word that Senator Cullan used, I would call it a mutation or a freak, and I cannot vote for it, and I would advise the members of the Legislature to vote in favor of Senator DeCamp's amendment which would strike it from the bill.

SENATOR CLARK: Senator Hoagland.

SENATOR HOAGLAND: Mr. President and colleagues, I would like to arise in support of Senator Cullan's position on this matter and maybe just spend a minute or two reviewing the history of the Mental Disorder Sex Offender Act that we passed two years ago, and give you an idea as to the origin of this concept in this provision and it is intended to be effectuated and why I think that it is probably constitutional as written. Now you will recall two years ago there was a great deal of pressure to repeal the sexual sociopath law because the courts questioned its constitutionality, and we did that and we replaced it with a Mental Disorder Sex Offender Act. And one of the principal criticisms of the MDSO Act is what are you going to do with these disoriented, disordered sex offenders when their sentence expires? If they were under say a two year or a four year or six year sentence only, it has been the experience in Nebraska that their mental disorder may carry beyond that. So we put a mechanism in the Mental Disordered Sex Offender Act which Senator Cullan is now refining in LB 95, and what that mechanism does is it indicates that when a mental disordered sex offender nears the end of his sentence, within seven days or so of the end of his sentence, why then automatically Mental Health Commitment Act procedures are initiated. Automatically a petition is filed as if the person had never been an MDSO but instead was the person across the street who suddenly lost control of his sensibilities and confinement against his will had to be considered. So all this simply...what this does and nothing else is as soon as that mental disordered sex offender nears the end of his sentence, commitment procedures are triggered, and as Senator Cullan has indicated, all of the due process protections that are present in the Mental Commitment Act then come into play, and the person is treated as

May 7, 1981

LB 95

anybody else who is brought to the attention of the Mental Health Board for a commitment under the Mental Health Commitment Act. Now I think it was a procedure we set up again to smooth the transition from the Sexual Sociopath Act to the Mental Disordered Sex Offender Act. I really see no fundamental constitutional problem with that approach, provided the person is accorded all the same rights as he would be if he were coming in off the street and a petition were filed against him under the Mental Health Commitment Act. So I think it is probably constitutional. I think the refinements that Senator Cullan is bringing to the Mental Disordered Sex Offender Act are good and we ought to go ahead and pass the Act with these provisions. Thank you.

SENATOR CLARK: I will now call the next lawyer for another opinion, Senator Beutler.

SENATOR BEUTLER: Mr. Speaker, I don't want to give an opinion on that, but I just can't help but stand up and give an opinion on what Senator Chambers has said. Senator Chambers, I certainly wish you would reconsider the bill limitation rule. You know, you stand up here and tell us how bad it is and we don't have time to look into all these questions, and I agree with you. I feel bad that I haven't read the case that is relevant to this particular issue, and there are hundreds of other bills like that. Nobody knew what we were talking about on several of the water issues the other day. Wouldn't we really be much better off if we dealt with about half the number of bills we deal with? Won't you relent? Thank you.

SENATOR CLARK: Senator Higgins.

SENATOR HIGGINS: Mr. Speaker and Senators, I will be brief. Senator Chambers referred to the fact that we are merely reacting to a public hue and outcry and my only response is, that is what we are here for, to represent the public in what they want, not our own personal ideas, but what the public is demanding, and for that reason I will support Senator Cullan's amendment. Thank you.

SENATOR CLARK: Senator DeCamp.

SENATOR DeCAMP: Well, Mr. President, I don't claim to be an expert in this like some of the others that have studied it, just like I know sometimes I have a bill here where I have done more work than they have, and they take my word for it, I hope. I think it has problems,

May 7, 1981

LB 95

but maybe I haven't researched it enough, so I am going to ask to withdraw the amendment. If they want to take the bill in its present form, if they feel the system will work, that's fine. So I will withdraw the amendment, but I do think they ought to check her just one trifle further, just to be sure.

SENATOR CLARK: The amendment is ordered withdrawn. What do you have next?

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

SENATOR CLARK: Senator Kilgarin. Senator Cullan.

SENATOR CULLAN: Mr. President, I would move that the bill be advanced. I would like to make one additional comment. I would be happy and will provide just for my own fun, a memorandum to Senator DeCamp and others that explains the issue, but one thing...comment that I would like to make is that I wish that some of the staff members who expressed concern to Senator DeCamp and who kind of have shot from the hip on this issue would come and visit with me ahead of time and we could explain it to them. I think it is important when you read a statute to read references, internal references, and this, of course, refers to a reference to Section 29-20 and it is important to remember for the record that indeed the process is started all over again. As Senator Hoagland said much better than I did, the individual has all the rights...an individual...the rights and the due process that an individual would have if he just strolled in, if he was just committed from across the street, so just as if he had never been an MDSO. So for that reason, I am pleased that Senator DeCamp has withdrawn his motion. I would ask you to advance LB 95.

SENATOR CLARK: You have heard the motion. All those in favor say aye. Senator Chambers, it is debatable.

SENATOR CHAMBERS: I will be brief, Mr. Chairman. I want to ask Senator Hoagland a question. Senator Hoagland, during the discussion, were you looking at a different portion of the bill than Section 44 that the rest of us were discussing?

SENATOR HOAGLAND: I was discussing the procedure set up in Sections 41, 42 and 43, Senator Chambers. That's right.

SENATOR CHAMBERS: Have you had a chance to look at Section 44?

May 7, 1981

LB 95, 541

SENATOR HOAGLAND: Not in detail, no.

SENATOR CHAMBERS: But upon looking at it, are you a little less certain that you support it one hundred percent?

SENATOR HOAGLAND: Well, I think that there are some questions raised by Section 44, Senator Chambers.

SENATOR CHAMBERS: And the only reason I am saying this, members of the Legislature, is because it is clear from Senator Hoagland's position on this bill and 213 that he is not trying to weaken this whole thing that Senator Cullan and others are trying to do. But when others who have looked at the matter, come to a similar conclusion even when they are on opposite sides of the fence, so to speak, then I think a wise person would reconsider. So I am just going to vote against the bill and I won't reintroduce Senator DeCamp's amendment to strike it because I think if it stays, it might knock the whole monstrosity down, which would suit me fine.

SENATOR CLARK: The motion is the advancement of the bill. All those in favor say aye. A machine vote has been asked for. All those in favor vote aye. All those opposed vote nay.

CLERK: Senator Clark voting aye.

SENATOR CLARK: While we are taking the vote I would like to introduce a guest of Lowell Johnson, Senator Lowell Johnson, from Fremont, although he is the son-in-law of Senator Remmers, Mike Guilliat, and I hope I am right on the pronunciation. Will you stand up? Welcome to the Legislature. Record the vote.

CLERK: 26 ayes, 1 nay, Mr. President, on the motion to advance the bill.

SENATOR CLARK: The bill is advanced. LB 541.

CLERK: Mr. President, LB 541 does not have E & R. I do have amendments from Senator...well several Senators, Mr. President, Senators Nichol, Sieck, DeCamp, Haberman, Maresh, Kremer, Higgins, Hefner, Johnson, Wiitala, Cullan, Fenger, Labedz, Goodrich, Vickers, Koch, Howard Peterson, Wagner, Wiitala, Kahle, Newell, Remmers, R. Peterson and Chambers.

SENATOR CLARK: Are those all separate amendments or all from one person?

CLERK: No, they are all from one person, and they are found on page 1734 of the Journal, Mr. President.

LB 3, 11, 12, 70, 95, 99, 228,
250, 257, 266, 266A, 296A,
310, 318, 328A, 369, 381, 384,
389, 428, 441, 470, 472, 472A,
497, 501, 506, 541, 543, 556A

May 11, 1981

PRESIDENT LUEDTKE PRESIDING

PRESIDENT: Prayer by Chaplain Palmer.

REVEREND PALMER: Prayer offered.

PRESIDENT: Roll call. Record the presence, Mr. Clerk.

CLERK: Quorum present, Mr. President, plus one.

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

CLERK: Mr. President, I have no corrections.

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

CLERK: Mr. President, I have an Attorney General's opinion addressed to Senator Chronister regarding compensation of rural water districts. That will be inserted in the Journal. (See pages 1899-1900 of the Journal.)

Mr. President, your committee on Enrollment and Review respectfully reports that we have carefully examined engrossed LB 3 and find the same correctly engrossed. 11 correctly engrossed, 12 correctly engrossed, 70 correctly engrossed, 95 correctly engrossed, 99 correctly engrossed, 228 correctly engrossed, 250 correctly engrossed, 257 correctly engrossed, 266 correctly engrossed, 266A correctly engrossed, 296A correctly engrossed, 310 correctly engrossed, 328A correctly engrossed, 369 correctly engrossed, 381 correctly engrossed, 384 correctly engrossed, 389 correctly engrossed, 428 correctly engrossed, 441 correctly engrossed, 470 correctly engrossed, 472 correctly engrossed, 472A correctly engrossed, 497 correctly engrossed, 501 correctly engrossed, 506 correctly engrossed, 541 correctly engrossed, 543 correctly engrossed. Those are all signed by Senator Kilgarin as Chair.

Mr. President, a new A bill, LB 556A, offered by the Speaker at the request of the Governor. (Read as found on page 1904 of the Legislative Journal.)

Mr. President, Senator Vard Johnson would like to print amendments in the Journal to LB 428 and Senator DeCamp to LB 318. See pages 1904-1906 of the Legislative Journal.)

PRESIDENT: The Chair recognizes Speaker Marvel for an explanation of order of business today on the agenda. Speaker Marvel.

PRESIDENT: Yes, Senator Carsten has one on LB 352.

SENATOR DWORAK: Thank you very much.

PRESIDENT: Any other questions? Okay, Mr. Clerk, we will commence then. Senator Higgins, did you have a question? On which one? On Senator Nichol's? Senator Nichol's was 548. Any further questions? Okay, we will commence then with LB 95, motion by Senator Cullan.

CLERK: Mr. President, Senator Cullan moves to return LB 95 to Select File for a specific amendment. The amendment is on page 2269 of the Journal.

SENATOR CULLAN: Mr. President, members of the Legislature, I have decided to return LB 95 for these amendments and I would ask you to do that. The amendments do four things. First, is technical bill drafting change, changing the word "regional center" to "treatment facility" so that is using the correct terminology in that regard. Secondly, the amendment provides that a period of time, the total period of time from the date that an individual is held as a result in an emergency admission certificate until the final hearing for that individual, total period of time that that individual can be held is seven days in lieu of ten days which was in the original draft of the bill. I still think ten days is reasonable but this does respond to an Attorney General's opinion on this matter and so I think that is an appropriate approach. The third portion of these amendments reduces from two to one the number of mental health professionals who must examine an individual within thirty-six hours after an emergency admission certificate has been executed so that this individual's freedom is denied and he is detained. Under the current draft of the bill two mental health professionals would have to examine the individual in that period and I am proposing to take that back to one. The reason I am making this change is that the Department of Institutions has given me a revised information so far as the number of mental health professionals they have available to make these examinations. I had consented to the amendment that Senator Fowler made on Select File to raise it from one to two. I believe that this is more appropriate. I still think there is adequate protections for the individual's liberty involved so I do ask you to reduce that number from two to one and I believe I have explained...oh, yes, and the last and final amendment I am making is to strike the last section of the bill which deals with MDSOs on conditional release. Now I still believe that the provisions of this bill are constitutional but I also recognize that if we have conditional release programs for civil committees, MDSO committees, and those who are committed

under the NGRI, not guilty by reason of insanity. If we set up a system establishing a conditional release for all these individuals we have a much stronger constitutional case because we take away any equal protection arguments. So I think this takes away that one argument that was raised on Select File by Senator Chambers and Senator DeCamp about the constitutionality of the bill. I still think they are wrong but next year I am going to come in with even a better bill and handle the conditional release program for all those mental patients. So with that, I would ask you to adopt these amendments, return the bill and then we can readvance it.

PRESIDENT: The Chair recognizes Senator Fowler.

SENATOR FOWLER: Mr. President, I support some of Senator Cullan's efforts to clean up his bill and try and eliminate the constitutional problems but I do think that it does not solve all the problems and for that reason I would have to oppose his amendment. LB 95 in the mental health commitment law makes a major change by striking the right of a preliminary hearing so that somebody who is committed would not be able to have a preliminary hearing. Currently you would have to have that within five days. Senator Cullan removes that completely. Now his bill did say that it would be ten days possibly before you would have any hearing at all so that you could be in a mental institution ten days without any sort of formal hearing to determine whether or not, in fact, you were mentally ill or dangerous. Now Senator Cullan is willing to concede to go back to seven days on that final hearing but I do wish he would consider reinstating the preliminary hearing because I think he still has major problems with the bill. I object to the portion of his amendment where he strikes the second opinion, the second psychiatric opinion. It seems to me that if somebody is going to be put in a mental institution like the Norfolk Regional Center, the Lincoln Regional Center or the Hastings Regional Center that it is not asking too much to have more than one psychiatric professional evaluate that person. If they are going to spend a week in a mental institution it would seem to me to get a second medical opinion is not an excessive or burdensome requirement. In the course it says within thirty-six hours that that should be offered. In that thirty-six hours there would be several shifts of medical personnel and two mental health professionals certainly should have the opportunity to look at someone. Considering the fact that some of the state psychiatrists have had problems themselves with drug addiction and problems that many of our psychiatrists or some of our psychiatrists have had to turn in licenses, these types of things have gone

on, I think that for protection to have a second opinion would not be bad, given the quality of service that our Department of Institutions is providing. So I think that Senator Cullan goes too far in his amendments. He does straighten out some of his constitutional problems in the bill but I would have to object to striking a second psychiatric opinion. Given the quality of service that we currently have in our regional centers, given the capacity of some of the staff, I think the only protection that we can provide is to get a second psychiatric opinion early on. For that reason I would oppose his amendments to LB 95.

PRESIDENT: The Chair recognizes Senator Cullan for purposes of closing on the return motion.

SENATOR CULLAN: Mr. President, members of the Legislature, let me say I believe there are absolutely no constitutional problems with the seven day period in lieu of the five day period and I believe a preliminary hearing is not necessary. The case which said that there would be a five day preliminary, five days maximum of holding an individual without a hearing, I can't remember the name of the case right now, but that was the case that declared the prior mental health commitment process unconstitutional and we have many additional safeguards in the system now that did not exist at that point in time. In addition to the mental health professional that examines this individual and under LB 95 now we are requiring a written report to go to the county attorney. The mental health professional does not make the determination to hold this individual by himself but the county attorney is the one that actually makes that determination. So there actually are two people looking at this individual within that thirty-six hour period of time to determine whether or not that individual should be held for a maximum of a week. Now I think that is a lot of protection for the individual. I don't think we need any more and I further think that we are going to have to put on considerably more staff and spend more money on overtime for other medical staff at the regional centers if we are going to require two of our state employees to evaluate these people during that thirty-six hour period. So I really believe that the amendments are appropriate. I think Senator Fowler raises a red herring so far as constitutionality is regarded and I would urge you to adopt this amendment and then proceed with the bill.

PRESIDENT: The question then is the return of LB 95 for purpose of a specific Cullan amendment. All those in favor vote aye, opposed nay. Have you all voted? Senator Cullan, what do you wish to do?

May 27, 1981

LB 95

SENATOR CULLAN: Mr. President, I would ask for the House to go under Call, well...

PRESIDENT: All right, do you want a Call of the House?

SENATOR CULLAN: ...wait a minute, I think we are coming in.

PRESIDENT: Well, all right, we will see if you want to go under Call. Have you all voted? I will ask it one more time and then we will see. Well, Senator Cullan, we just as well...do you make a motion then?

SENATOR CULLAN: Mr. President, do we have...? We only need three more votes.

PRESIDENT: I am sure they know that. Well, we better...

SENATOR CULLAN: Mr. President, could we have the House under Call, please.

PRESIDENT: All right, we'll have...record the vote.

CLERK: 25 ayes, 7 nays to return the bill, Mr. President.

PRESIDENT: The motion carries. The bill is returned. Senator Cullan.

SENATOR CULLAN: Mr. President, members of the Legislature, a number of individuals did not have an opportunity, I guess, to hear what the amendments were so very briefly I'll just...

PRESIDENT: Just a minute, Senator Cullan. (Gavel.) I believe they couldn't hear you if you did try to explain it, so maybe we could try to get some order here because we still have a long day ahead of us and you better try to take care of these things as they come up. Senator Cullan, go ahead.

SENATOR CULLAN: Okay, Mr. President, there were a number of questions while we were voting about what the amendment was so I will explain it very briefly. The first, one portion of the amendment strikes the provision of the bill that would have provided for conditional release of individuals who were released from their terms as mentally disordered sex offenders so there would be no conditional release under the bill. This responds to concerns raised by Senator De-Camp and Nichol, Senator Chambers, that those sections were unconstitutional. I do not believe they were unconstitutional but next year I have decided to come in with another bill providing for conditional release, not only for MDSO

patients, but also for those found not guilty by reason of insanity and other civil committees. If we pass that bill in one step we eliminate any potential of an equal protection problem and so that is why I am striking that section, not because I believe it is unconstitutional, but because we will be in a stronger position next year if we do it that way. Secondly, we reduce from ten to seven the number of days that an individual may be held without a hearing. Right now it is...well I guess that explains that sufficiently. The third portion of the amendment reduces from two to one the number of medical examinations which must be performed, psychiatric examinations which must be conducted in the thirty-six hour period following the execution of an emergency admission certificate and I think that is it. Oh, yes, then there is one technical change in the bill that corrects a bill-drafting change. That is it.

PRESIDENT: Okay, the Chair recognizes Senator Fowler for clarification of what you said.

SENATOR FOWLER: Right. Again, I would say that the point of disagreement is the second psychiatric or mental health professional opinion. Senator Cullan had agreed to that concept initially and then the psychiatrists at our regional center said, gosh, we don't want to do that. I mean we just want to have one psychiatrist look at this and they say things like, I mean, suppose we get a second mental health professional in and they disagree? Suppose that, in fact, one of our people says this person should be put in the regional center and the other says they should not. That would be pretty embarrassing, wouldn't it, and that is exactly why we need the second opinion. Senator Cullan is changing it so that someone can be in a regional center for a week without a hearing. His original bill went ten days and the Attorney General, looking at the court decisions that threw out the previous Mental Health Commitment Act, said ten days is excessive so Senator Cullan drops back a couple of days but even to spend one week without a preliminary hearing with only one psychiatric evaluation and the word of a county attorney, which is in no way any sort of medical judgement, I think is excessive. The history on the Mental Health Commitment Act in Nebraska is that a few years ago the court threw it out for exactly the problems that Senator Cullan is recreating, the lack of a preliminary hearing, the lack of some early action when someone is committed and to go back to keeping someone in our state institutions for a week without a formal hearing, without evidence, is going to seriously endanger the keeping of the whole act. Now I suggested to Senator Cullan that maybe a second psychiatric opinion could help undo those

sorts of problems because early on in the first thirty-six hours at least two mental health professionals would evaluate this person. The hearing calls for a board of three people and Senator Cullan goes back to just one psychiatrist or a doctor. It doesn't even have to be a psychiatrist, just a medical doctor and a county attorney can keep someone committed in an institution for a week. I think that is excessive. Certainly Senator Cullan's other amendments clean up other problems that exist in the bill but by adopting the Cullan amendment and passing 95 we once again endanger the whole civil mental health commitment process because we are forcing people to spend a week in our institutions on the word of one psychiatrist or one mental health professional, a doctor, a psychiatrist or psychologist, and one county attorney without any sort of formal hearing and that is an excessive period of time. For that reason I oppose Senator Cullan's amendment and would oppose the bill on Final Reading if adopted. We are throwing the whole mental health commitment thing back into the courts. We are doing, I think, far more damage with this bill than the previous bill and I think that we ought to exercise some caution or restraint before adopting the amendment and before passing 95.

SENATOR CULLAN: Mr. President.

PRESIDENT: Yes, Senator Cullan, will you close then.

SENATOR CULLAN: Yes. In closing, Mr. President, Senator Fowler would have you believe that the courts are going to throw out the entire Mental Health Commitment Act because we are making a total change of two days. The current Mental Health Commitment Act allows for an individual to be held without a hearing for five days. This is going to allow an individual to be held without a hearing for seven days. Now I guess I don't understand what is so excessive about that but one thing I do understand is that the case which Senator Fowler referred to, I'm not sure how you pronounce it, Doremus vs. Farrell, something like this, held the old commitment act unconstitutional for many, many reasons, one of which was the lack to have a preliminary hearing but in addition they held that commitment act unconstitutional because there was a failure to require that the subject be dangerous to himself or to others as evidence by recent overt acts. We have a standard, a mental health commitment standard that we are not changing. It also held that act unconstitutional because it failed to require effective and timely notice of the charges under which a person was allegedly, had to be committed. So there were many, many reasons that the

May 27, 1961

LB 95, 552

commitment act was held to be unconstitutional. We have a lot of safeguards for individuals in the current system. The preliminary hearings are waived in many times in the current process. I just believe there are no constitutional problems with the seven days and with the one hearing. I would urge you to adopt the amendments.

PRESIDENT: Motion...Senator Marsh, for what purpose do you arise? He was closing.

SENATOR MARSH: I know he was closing. I request that you separate the sections of his...

PRESIDENT: All right, divide the question?

SENATOR MARSH: Divide the question so that the mental health professionals are voted on separately.

PRESIDENT: Well now, we have returned it. You see you would have to return it, Senator Marsh, in a divided manner because it was brought back to us in the form so we would have to do it that way, if that answers your question. We cannot divide it at this point. All right, so the question is, the specific Cullan amendment to LB 95. All those in favor vote aye, opposed nay. Have you all voted? One more time, have you all voted? Record the vote.

CLERK: 25 ayes, 9 nays, Mr. President, on the motion to adopt the amendment.

PRESIDENT: The Cullan amendment is adopted. Senator Cullan, do you wish to or who wants to move this back?

SENATOR CULLAN: Mr. President, I move the bill be readvanced.

PRESIDENT: All right, the motion to readvance to E & R for engrossment. Any discussion? Senator Fowler, you still have your light on. Do you wish to discuss it or...okay. The question is the advance of LB 95 to E & R for engrossment. All those in favor signify by saying aye, opposed nay. The bill is advanced to E & R for engrossment, LB 95. The next bill, Mr. Clerk, is LB 552.

CLERK: Mr. President, Senator Dworak would move to return LB 552 to Select File for a specific amendment. The amendment is on page 2276.

PRESIDENT: The Chair recognizes Senator Dworak.

SENATOR DWORAK: Mr. President, I move we return LB 552 to Select File for a specific amendment.

May 29, 1981

LB 95, 95A, 172, 242

All members will return to your desks. As soon as everybody is at their desk we will commence with the reading of LB 95.

CLERK: Mr. President, I have a report of registered lobbyists for the week of May 22 through May 28. (See pages 2389-2390 of the Legislative Journal.)

PRESIDENT: I think we are about ready. I think we can begin, Mr. Clerk. All right, we will proceed then, Final Reading, LB 95, Mr. Clerk.

CLERK: (Read LB 95 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 95 pass. All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read record vote as found on page 2390 of the Legislative Journal.) 37 ayes, 11 nays, 1 present and not voting, Mr. President.

PRESIDENT: LB 95 passes. Next bill on Final Reading is LB 95A, Mr. Clerk.

CLERK: (Read LB 95A on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 95A pass. All those in favor vote aye, opposed nay. Have you all voted? Record the vote.

CLERK: (Read record vote as found on page 2391 of the Legislative Journal.) 38 ayes, 8 nays, 3 present and not voting, Mr. President.

PRESIDENT: LB 95A passes. I might just announce that the Speaker is, at the request of Senator Nichol and others, the Speaker has taken off of Final Reading, 242 which occurs a few bills down so you might want to make a note on your agenda. 242 will not be read on Final Reading today. The next bill on Final Reading, Mr. Clerk, is LB 172.

CLERK: (Read LB 172 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 172 pass. All those in favor vote aye, opposed nay. Record the vote.

May 29, 1981

want to take one more bill then? Okay, fine. Have you all voted? Record the vote.

CLERK: (Read record vote as found on pages 2406-2407 of the Legislative Journal.) 37 ayes, 8 nays, 2 excused and not voting, 2 present and not voting, Mr. President.

PRESIDENT: LB 352 passes with the emergency clause attached. The next bill on Final Reading before the break for lunch is LB 385.

ASSISTANT CLERK: (Read LB 385 on Final Reading.)

PRESIDENT: All provisions of law relative to procedure having been complied with, the question is, shall LB 385 pass. All those in favor vote aye, opposed nay. Record the vote.

CLERK: (Read record vote as found on pages 2407-2408 of the Legislative Journal.) 29 ayes, 14 nays, 2 excused and not voting, Mr. President, 4 present and not voting.

PRESIDENT: LB 385 passes. If you would read some matters in and then we will get ready for recess.

CLERK: Mr. President, a letter from the Governor addressed to the Clerk. (Read. Re. LB 406, 548, 389 as found on page 2409 of the Legislative Journal.)

Mr. President, your committee on Enrollment and Review respectfully reports we have carefully examined LB 321 and find the same correctly enrolled.

Mr. President, I have a veto message from the Governor addressed to Dear Mr. President and Senators. (Read. Re. 129A. See page 2408 of the Legislative Journal.)

Mr. President, finally LB 95, 95A, 172, 218, 234, 234A, 235, 302, 389A, 318, 344 and 352 are ready for your signature.

PRESIDENT: While the Legislature is in session and capable of transacting business I propose to sign and I do sign LB 95, LB 95A, LB 172, LB 218, LB 234, LB 234A, LB 285, LB 302, LB 318, LB 344 and LB 352. Well, let's let somebody... Senator Marsh, do you wish to recess us until one-thirty.

SENATOR MARCH: I move we recess until one-thirty.

PRESIDENT: The motion is to recess until one-thirty. Any... All those in favor to recess until one-thirty signify by saying aye, opposed nay. We are recessed until one-thirty.