[LB6A LB44 LB79 LB79A LB97 LB153A LB153 LB230 LB263 LB269 LB271 LB410 LB423 LB429 LB495A LB495 LB530A LB530 LB553 LB612 LB634 LB634A LB638 LB639 LR121 LR122 LR123 LR139 LR140 LR141 LR142 LR143 LR144]

SENATOR CARLSON PRESIDING

SENATOR CARLSON: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the fifty-sixth day of the One Hundred Third Legislature, First Session. Our chaplain for today is Fr. Timothy Lannon, S.J., of Creighton University in Omaha, Senator Nordquist's district. Please rise.

FR. LANNON: (Prayer offered.)

SENATOR CARLSON: Thank you, Fr. Lannon. I call to order the fifty-sixth day of the One Hundred Third Legislature, First Session. Senators, please record your presence. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

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

CLERK: I have no corrections.

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

CLERK: Your Committee on Enrollment and Review reports LB423, LB271, LB79, LB79A, LB230, and LB612 to Select File. And that's all that I have, Mr. President. (Legislative Journal pages 927-929.) [LB423 LB271 LB79 LB79A LB230 LB612]

SENATOR CARLSON: Thank you, Mr. Clerk. I would recognize Speaker Adams for an announcement.

SPEAKER ADAMS: Thank you, Mr. President. Members, I have two things I'd like to talk with you about: first of all, consent calendar. You remember last week I announced that we would have a consent calendar, and we will. And there will be a memo coming out to all of your offices today about the consent calendar, which outlines the criterion whereby bills can find their way to the consent calendar. But a couple of things I want to point out to you and to emphasize, and these same things will be in that letter. This week, 5:00 p.m., April 11, is the deadline, is the deadline. And your requests don't come from you; they come from the committee Chair of jurisdiction over that bill. So I don't need to have letters from you saying please put my bill on consent. We need to hear from the committee Chair of that committee with your bill on that list, all right? And then

we'll schedule that calendar later this month. But this week you need to be getting with the committee Chairs and lining those things up. In terms of scheduling this week, what we're going to do in order to allow the Appropriations Committee some time to exec, today we're going to try to end somewhere around the 5:00-5:30, in that area, so that they have time to exec. Tomorrow we'll go back to the 6:00-6:30. Wednesday again they'd like to exec so we'll go back to the 5:00-5:30. And then on Thursday, we will plan to work through the noonhour again. Thank you, Mr. President.

SENATOR CARLSON: Thank you, Speaker Adams. (Visitors introduced.) Mr. Clerk, we'll now proceed to the next item on the agenda.

CLERK: Mr. President, LB634A is a bill by Senator Davis. (Read title.) [LB634A]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Davis, you're recognized to open on LB634A. [LB634A]

SENATOR DAVIS: Thank you, Mr. President, members of the body. Just to refresh everyone's memory, LB634 is the Wildfire Control Act of 2013 and would address serious deficiencies in Nebraska's response to wildland fires. The adoption of the bill would save the state a significant amount of revenue over time through prompt fire management once appropriate resources and management systems are put in place. We've passed out a handout for you to look through, if you choose to, which kind of details some of the aspects of the bill. And as outlined in the handout you received, LB634A includes five components which support the provisions of the Wildfire Control Act. They are, first, the expansion of the Aerial Asset Program with the addition of two single-engine air tankers, or SEATs, as they are often named. The annual appropriation in this component would cover the availability and flight costs for two planes for an average fire season. Second, the expansion of the Forest Fuel Program: LB634 would provide 25 percent of the expansion costs, the state appropriation would leverage a 50 percent cost-share from federal agencies, and private landowners would contribute the remaining 25 percent of the total expansion costs. Third, the expansion of the Federal Excess Property Program: With support from two heavy truck mechanics, the number of pieces of excess federal equipment to be prepared and placed with volunteer fire departments would double annually. I call your attention to map number one in your handout which depicts the current placement of this equipment statewide just to demonstrate to you that this equipment is not just centered out in rural Nebraska but is distributed equally across the state. And if you talk to the volunteer firemen, you'll find out that they think this is one of the greatest things that they have available to them. Fourth, the expansion of training programs for volunteer firefighters, private landowners, and Nebraska communities: The addition of two wildland fire suppression trainers in western and central Nebraska would complement the position that already exists in eastern Nebraska. I call your attention at this time to map number two in your handout which shows the current number of hours of wildfire training for volunteer firefighters

statewide. The fifth and final component is the rehabilitation of burned lands to protect existing infrastructure. In response to conversations with Senator Mello about the fiscal impact of my priority bill, I have tried to find new ways to expand on the collaborations and leveraging of additional funds that are already part of LB634. Productive discussions have identified creative ways to bring new partners on board who could contribute energy and resources to support the critical need that prompted the introduction of LB634 in this legislative session. Recognizing the need for prudent spending, we have identified several potential cost savings which could be implemented to reduce the fiscal note on this bill. They include but are not exclusive to the following: (a) develop a cost-share arrangement with NRDs to reduce the state's fiscal contribution to thinning activities while not reducing the federal contributions; (b) develop a similar arrangement with the Nebraska Environmental Trust which has already undertaken similar thinning activities with private landowners and other entities; (c) consider shifting the flight cost to another state agency which is already funded; and (d) work through the Department of Economic Development to begin immediate plans for developing a cedar harvesting industry in heavily infested parts of Nebraska. I ask the body to support LB634 and the underlying bill when it is scheduled on Select File, and will take any questions you might have. [LB634A LB634]

SENATOR CARLSON: Thank you, Senator Davis. Members, you've heard the opening on LB634A. In a moment, the floor will be open for discussion. (Doctor of the day introduced.) Those wishing to speak include Krist and Chambers. Senator Krist, you're recognized. [LB634A]

SENATOR KRIST: Thank you, Mr. President. Good morning, colleagues, and good morning, Nebraska. I wondered if Senator Davis would yield for a couple of questions. [LB634A]

SENATOR CARLSON: Senator Davis, would you yield? [LB634A]

SENATOR DAVIS: I will. [LB634A]

SENATOR KRIST: Senator Davis, you and I have had several discussions off the mike about the command and control and the execution of this plan, and you know my concerns and that is that a contractor or contract for this capability be always available to us and that the execution of this may not necessarily fall or should not fall with someone who has no experience with declaring an emergency for these kinds of activities, these fires. Can you talk to that for just a second for me, please? [LB634A]

SENATOR DAVIS: Certainly. The current process: The chief will call the county emergency management association and I believe they then contact the district manager and then maybe it's on to NEMA. I think that's the way it's handled at this point. The way the bill is currently written, we have a person who is specifically trained

in dispatch who will be in charge of the SEAT dispatch when that call comes in from the chief. Does that answer your question, Senator? [LB634A]

SENATOR KRIST: Just to take it one step further, so an emergency would be declared at some point based upon a qualified firefighter on the ground. Is that what you're telling me? [LB634A]

SENATOR DAVIS: The qualified firefighter on the ground probably would contact his chief. At that point the chief, if we were going to dispatch the SEATs, the chief would probably call the SEAT manager and the SEAT manager then would assess the situation before deploying the SEAT. Not all forest fires or not all wildfires are going to demand a SEAT allocation because of the cost, so we'll still use the private applicators who are out there, which has been the custom in the last several years. [LB634A]

SENATOR KRIST: Okay. I will talk to you again off the mike about it. My concern, colleagues, is that when an emergency is declared and we expend the energy to try to bring fires under control, it has been the experience of other states, including California, that calling back from the emergency to save money is not always the best course of action, and that qualified technicians and firefighters and folks who know forest fires and fires of the such make that decision. I think our NEMA guys do a great job across the board in some areas, but they're not qualified in this particular area. So it's important, once an emergency is declared, that a follow through is also there. Thank you, Senator Davis. Thank you, Mr. President. [LB634A]

SENATOR DAVIS: Thank you, Senator Krist. [LB634A]

SENATOR CARLSON: Thank you, Senator Krist and Senator Davis. Senator Chambers, you're recognized. [LB634A]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I think Senator Krist made some very, very important points and his questions are right on target, and he stated that he will talk to Senator Davis off the mike. And I would say at this point, after they complete their discussion, I'd like to talk to Senator Krist also. Generally, if a bill advances from General File to Select File, I will support moving the A bill to go with it. The reason I have to make that clear, based on a discussion from the committee Chairs the other day, there is a lack of understanding as to why certain things are done, at least by me. If there's a bill that I particularly oppose, I will oppose it every step of the way, including the A bill. This is not such a bill. And while I have this spot on the floor, I'd like to comment on a picture that Senator Davis passed around. I was not here when this bill was discussed, but it is a color reproduction of a photograph of a fire. It is one of the most beautiful renderings of color that I have seen. It shows that beauty is in the eye of the beholder in more ways than one. Were it not clear that this were a picture of a destructive fire, then it could be stated that this is one of nature's

shows of how wonderful, how resourceful, and how beautiful she can be even when utilizing something which can be destructive. Since this is a destructive fire, I presume, it will not be seen as beautiful to anybody maybe other than myself, but I look at the differing shades of blue in the sky, a very dark picture along or rendering along the bottom, differing reflected colors on the trees, and then the fire is multihued. When people speak of things like beauty, there must be nuances recognized. And that brings me to what we do on the floor which seldom is beautiful. I'm going to have a comment or two, not on Senator Davis' A bill, about what the Speaker presented with reference to the consent calendar. I lack confidence in Chairs. I said that the other day. And here's what I'm saying. What you do with my bills doesn't matter, but when you talk about process then I see a lot of hypocrisy. So I'm working on a poem, showing my view of what the Chairperson said the other day and how they've comported themselves on the floor and what they've advanced. So here's what I will say. This will be the theme: If committees their duty never shirk, why on the floor must I do so much work? We were told how much care they give to these things before they present them to the floor. There is political maneuvering, political consideration taken, and I know it. And I'm going to deal with the committee Chairs and with the Legislature as they have chosen to deal with me. That one bill is of no consequence. Had it been advanced, nothing probably would have happened this session. If the vote had been taken and it was not successful, the bill would be dead. So what? I'm going to have to offer it again next session anyway. There are reasons that I have for doing what I do, and if I tell you in advance what it is,... [LB634A]

SENATOR CARLSON: One minute. [LB634A]

SENATOR CHAMBERS: ...you prepare for that and you gear what you say to what I've said my purpose is. I need you to carry out what you're going to do in your nefarious way, without being aware of how I am judging and what I am looking at. So since these consent bills are sent to us based on what the Chairpersons say, if you have a bill on consent calendar, look out. Thank you, Mr. President. [LB634A]

SENATOR CARLSON: Thank you, Senator Chambers and Senator Davis. Seeing no other senators wishing to speak, Senator Davis, you're recognized to close on LB634A. [LB634A]

SENATOR DAVIS: Thank you, Senator Carlson. Just as a point of reference, on the handout that I've handed out, it talks about SEAT dispatch, which is I think the third item down on the front cover page, which I think might answer some of Senator Krist's questions. As I said, we're working hard to reduce the fiscal impact to the state but I think I've said before it's just a matter of time, if we leave things the way they are, before we have a significant loss of life or greater loss of property. You know, we've had $12 million worth of cost to the Nebraska Emergency Management last year, $6 million in 2006, and so as you have said, Senator Carlson, this is a bill that actually is probably

going to save the state money, protect our property, and to keep us from loss of life. So I would urge the body to move this forward. Thank you. [LB634A]

SENATOR CARLSON: Thank you, Senator Davis. Members, you've heard the closing on LB634A. The question is, shall LB634A be adopted? All those in favor vote yea; all opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB634A]

CLERK: 43 ayes, 0 nays, Mr. President, on the advancement of LB634A. [LB634A]

SENATOR CARLSON: LB634A does advance. Mr. Clerk, next item. [LB634A]

CLERK: LB495A, a bill by Senator Sullivan. (Read title.) [LB495A]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Sullivan, you're recognized to open on your bill. [LB495A]

SENATOR SULLIVAN: Thank you, Mr. President. Good morning, colleagues. LB495A accounts for the increase in state support for the three-to-five Early Childhood Education Grant Program for the upcoming biennium, $50,000 for fiscal year 2013-14 and $150,000 for fiscal year 2014-15. These additional amounts would be appropriated from the Education Innovation Fund, which consists of lottery dollars dedicated to support education. The bill accounts for only the increase in support for the three-to-five grant program because the base amount of annual funding for the program is already accounted for in the budget. LB495A also provides for the appropriation of $1 million from the Early Childhood Education Endowment Cash Fund for fiscal years 2013-14 and 2014-15. You'll recall from the General File discussion on Friday that the $1 million being appropriated will be derived from the Education Innovation Fund. In summary, LB495 and this subsequent A bill will dedicate Education Innovation Fund dollars to support both three-to-five and the birth-to-three Early Childhood Education Grant Programs. LB495 directs $1.75 million for fiscal year 2013-14, $1.85 million for fiscal year 2014-15, and $1.95 million for fiscal year 2015-16 from the Education Innovation Fund to support the three-to-five grant programs with additional support also coming from the General Fund in the upcoming biennium. LB495 also provides for $1 million transfers from the Education Innovation Fund to the Early Childhood Education Endowment Cash Fund for each of the next three fiscal years to further support the birth-to-three grant program. I appreciate your support for LB495A. [LB495A LB495]

SENATOR CARLSON: Thank you, Senator Sullivan. You've heard the opening on LB495A. Are there senators wishing to speak? Senator Chambers, you're recognized. [LB495A]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, we're talking about process this morning. And when I say "we" that is the royal "we," because

it's only me. I'm going to keep bringing these issues up because the first stone was thrown by the committee Chairs. They went way overboard Friday. You would think we were talking about deposing Pope Francis and ensconcing Minister Louis Farrakhan of the Nation of Islam as the pope. I would have thought that not only the Legislature would be brought to its knees by such a catastrophic thing as pulling a bill from committee but the entire republic would be brought down in shambles. They engaged in overkill. And since they did that, and there were more committee Chairs speaking than anybody else, I've got to take them on. They set the standards around here. They set the rules around here and since overkill is the rule, then I like that. I don't have to worry about nuances anymore, although my nature being what it is I cannot just throw that aside. But I believe if there is an amendment offered to a bill on consent calendar, that in itself won't prevent it from being considered. Because unless the rules have changed during my absence, at the end of the allotted time a vote is taken no matter what, which places the consent calendar on a higher basis than any other item before us. Even if you want to invoke cloture, that has to follow a process. This is where a bill, a bill which is deemed insignificant and inconsequential, therefore it's on the consent calendar, is guaranteed a vote after a certain amount of time. My motion to pull got no vote at all, but that's not what I'm complaining about. I'm complaining about what was said and the kind of nonsense that these Chairpersons said when I have to take the bills that they supposedly worked so hard on and deal with things like ordinary grammar, point out conflicts between existing law and the bill they sent before us, and I'm going to do that some more. Some people suggested that I not undertake the duty and responsibility of editing and correcting all of this atrocious legislation; just let it go. Well, see, because other people would be deemed fools, I at least want to separate myself from that group. Now this A bill I have no concern about, although since the person bringing it is a Chairperson...no, it's not; yes, she is. This is not John L. Sullivan; this is Joan L. Sullivan, in case you all didn't know, John L. was known for this. He was a pugilist. I'm not going to attempt to hold up this bill. I had no opposition to the underlying bill. I have no opposition to the A bill. But I'm going to demonstrate how I get my pound of flesh. Now how would you like me to carry an A bill to cloture? [LB495A]

SENATOR CARLSON: One minute. [LB495A]

SENATOR CHAMBERS: And then you consider what Senator Lautenbaugh called to your attention. Fools, before you all put a rule in a book that said cloture can be invoked at any time, they tried every manner of rule change to stop me and they never did. And I'm going to bring you all some articles to show how futile it was, how foolish it was. And I won ultimately anyway because my goals are different from those of the other members of the Legislature. I got to put my light on again, Mr. President. [LB495A]

SENATOR CARLSON: Thank you, Senator Chambers. And you are recognized again. [LB495A]

SENATOR CHAMBERS: Thank you. Mr. President, I almost elevated you a few notches by referring to you as Mr. Chambers, but I decided I ought not do that because you may not see carrying that name the same way I see it. What I have to demonstrate here is that I mean what I say. If it's a nice day, I mean it. If it's a dismal day, I mean it. If everybody is getting along, I mean it. If nobody is getting along, I mean it because nobody is the standard for me. You can change the rules, you can suspend the rules, you can gang up on my bills in committee, that will not stop me. If you want to stop a fire-breathing dragon from breathing fire, don't pour high-octane gasoline on the fire-breathing dragon because it's fuel. I can stand alone and will. Can you? Will you all get together and stop me? Fine, because when you turn the Legislature into that, then I own it truly, and I will show you what I will do. I've got bills, one of them will come out here. Kill it. You're superstitious if you hold to that notion that you can make a doll that looks like somebody or purports to look like somebody and you put something that belongs to that person on the doll, then you stick a pin in the doll, the individual whose image that supposedly is will feel the pain. And if you stick that pin through what would be a vital organ, the person whose image that doll is to represent dies, you're going to see that makes no sense and it certainly doesn't apply to me when it comes to my bills. Kill the bills and you won't kill me. You inflame me. You provoke me. If all 48 of you turn against me, what difference does it make to me? You're then doing what I say one person can turn a Legislature into. The Chairpersons think that by teaming up they intimidated everybody and what they said becomes gospel. What they say is not gospel and their mouths are not prayer books. They are ordinary senators here whom a majority voted for to entrust certain prerogatives to them in running a committee, but that's as far as it goes. They don't get any special consideration from me. They don't get out of jail by passing go. They started it. My children are all grown so I can't use my children as an example anymore, but if they were young, what would they think about their father if because the odds appear to be overwhelming he would shrivel up and take low? They couldn't think much of their father. But my children never saw that in me and they will never see it. And in those early days I was able to say when my children reach an age where they can evaluate what I did, when they can make judgments and pronounce judgments about what I did and upon me, what will be their verdict? They're all grown now, well grown, and the verdict from none of them is negative. They lived in a house with me. They watched, as they grew up, how I dealt with them, how I dealt with their mother, and how I functioned in the community of which they were a part. And they could take me... [LB495A]

SENATOR CARLSON: One minute. [LB495A]

SENATOR CHAMBERS: ...as an example. They never experienced any pressure from me in terms of how they should live their life, what they should do with their life. I would talk to them and point out what I thought were pitfalls, but I always explained that they don't belong to me like a chair or my car. Their life is theirs to lead. They don't owe it to me to do anything. But I owe everything to them, having brought them into the world, to

provide for their needs, to protect them, to respect them and show them, by the way I treated them, how they ought to demand that everybody will treat them. Thank you, Mr. President. [LB495A]

SENATOR CARLSON: Thank you, Senator Chambers. And you are now recognized again. This is your third time. [LB495A]

SENATOR CHAMBERS: Thank you, Mr. President. I don't understand why you all don't change the rules and say that a person can't speak but once on an A bill. And then I'll just find another way to beat you. How are you going to confine water? You going to build a wall all the way around it? Then it just seeps down into the ground and comes out on the other side of the wall. You can't win. And you've reduced things now to winners and losers, and you think that I lost. How much do you think that bill meant to me? It's stuck in committee. I haven't even talked to Senator Harr, Burke Harr. He's one who didn't vote at all. I don't run around here begging to senators to vote for something of mine. Vote if you want to; don't vote if you want to; vote no. So what? That is your orientation. And if I decide that I'm going to speak on every bill, then that's what I'm going to do. And I hope you don't think that making an ugly face does anything other than provoke me further, because you let me know how I am controlling you. Senator Bloomfield, a long time ago I coined a little expression: The louder the vipers hiss, the closer you know you're striking to the nest. So hissing does nothing. The viper which hisses cannot even hear its own hiss because it is deaf. Snakes don't hear anything, if we can believe what the biologists and other scientists tell us. They feel vibrations. Their tongue is forever flicking in and out so that they can taste and sense their environment. We can learn a lot from the so-called lower orders. But if as those of you all who pray to one particular, what you call, supreme being truly created everything, you shouldn't find it strange that all living things have certain things in common. There might be a blueprint according to which all of them were constructed, or maybe not. But I'll tell you this much. I'm going to set the pattern for what I intend to do and how I will do it. And as Old Blue Eyes, that guy Frank Sinatra--even when he had geriatric vocal cords he still tried to sing--he sang a song called "My Way" and people fell in love with that song. And for me, it was one of the worst songs he ever sang, in my view, and he sounded worse on that than on any other song he has sung, in my view. One of the songs of his I like the best was "It Was a Very Good Year." I like the instrumentation that introduced it. Then I like how he carries people through their lifetime. And now...well, I won't go into that now. I don't have enough time. I was not going to sing it. But I want to keep emphasizing, whatever I choose to do I will do and you can't stop me and no collection of you can stop me. You can slow me down, but in the process of stopping me, you cut off your nose to spite your face. You're in a no-win situation. I'm in a win-win situation. I'm not down here just to try to get bills passed. I'm down here to stop trash legislation from passing. And now I see that I have to do even more to deal with all of this wonderful legislation that these very careful committee Chairs sent out to the floor. [LB495A]

SENATOR CARLSON: One minute. [LB495A]

SENATOR CHAMBERS: And if the committee does such good work, why did a guy, a one-armed guy whom I could call a one-armed bandit, had to rouse himself from that excruciating pain and pick up the telephone and call these committee members and say you did something that was stupid, undo it, call that bill back, the committee? And what did they do? They called the bill back. And I'm supposed to believe these committees are so careful? That's what I'm...you all accepted because you were told that. I'm going to view with a jaundiced eye anything any committee Chair says. The Speaker is not a committee Chair. He might be able to prevail on me to do a little differently from what I indicate I might do, but he's going to have some hard work. Thank you, Mr. President. [LB495A]

SENATOR CARLSON: Thank you, Senator Chambers. Senator Lautenbaugh, you're recognized. [LB495A]

SENATOR LAUTENBAUGH: Thank you, Mr. President and members of the body. And it is not my intention to speak long, and for once this session I am not going to give my leftover time to Senator Chambers, especially since singing was threatened specifically. So we will move on. I would just like to leave you with one thought in the vein of what Senator Chambers was just saying. A motion to pull a bill from committee takes a majority of elected members. That is almost the lowest standard we have for anything. The only thing lower is a majority of those voting. Why is that? We didn't say three-fifths, we didn't say two-thirds, just a majority of those voting. And so I will leave you with this. If it's really an unwritten rule and part of our traditions that we never use that, it is very curious that the vote count for doing so is so very low. It's very curious that I could stand here and give you a couple historical examples without really trying last week. And I think we do have to try to understand not just the letter of the rules but what they actually say and why they were placed there, because if the committee process was supposed to be sovereign, it would say that. We would have put in there, well, you can't pull a bill from committee without two-thirds or three-fifths or some other percentage. Instead, just a majority of those voting, but we're never supposed to do it? That does not seem to be the intent of our rules. And I suppose there's a danger here that we just introduce some amendments to the rules that better reflect our alleged unwritten rules, which seem to trump our written rules all too often, and maybe we reconvene the Rules Committee and then we have floor debate on that. But there's a problem here when we act like certain rules are supposedly untouchable but we can't explain why the threshold for proceeding under that rule is so low and set so low by us and by our predecessors who routinely availed themselves of that rule. And again, I told you I wasn't going to take a lot of time on this and I'm not going to, but I hope you're wondering why that standard is so low if it's something we're never supposed to do. And I'll leave you with that thought. Thank you, Mr. President. [LB495A]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Senator Lathrop, you're recognized. [LB495A]

SENATOR LATHROP: Thank you, Mr. President and colleagues. This discussion on LB495 has turned into revisiting the idea of a pull motion. It is in the rules. Senator Chambers is within his right to do that. The question is whether it's a good idea. Now, I made the point last week why I believe it's a poor idea. I want to reiterate that because here is my concern. And I've worked with a lot of things with Senator Chambers on...in committee, because I sit with him on every single committee. Here's the concern, okay, and I'll start with the bills that we have seen this year in Judiciary Committee. We had a bill put into the committee that was clearly unconstitutional, clearly unconstitutional. It thumbed its nose at the supremacy clause, the United States Constitution. Okay? So if we permit a pull motion today, we'll get one on the unconstitutional bill that was introduced into the Judiciary Committee. And then you say, well, what's the big deal, who cares because it will be out on the floor, it won't go anywhere, it's not prioritized. Well, then we'll get to the next motion, which is a motion by the members of the body to change the agenda. And in two motions we've lost control of the place. Now we could sit here and talk about two things. One is the idea of a pull motion and the other is whether his bill was treated fairly in the Revenue Committee. That's a different question. But if you want to start doing pull motions then let me tell you what will happen next year. Somebody puts a bill in that appeals to the frightened and the people who are reading stuff that you and I probably don't agree with that are suggesting that there are conspiracies that don't exist, and we've had several of those bills in the Judiciary Committee alone. We can have anybody put anything in and bypass the filter of the committee, and they can do it with two motions, and they won't even need a priority at that point. Pull the bill, then have another one, because the rules permit a member to rearrange or have a motion to change the agenda, and now we're taking the bill up. Now this may be a poor example. This bill is a legitimate policy discussion. Okay? It is a legitimate policy discussion and I'll give Senator Chambers that. Obviously, I was here last year for it, but I'm going to tell you, you are two motions away from...because it will be the next conversation we have which is we're going to set the agenda. I don't like...I don't like the fact that the Speaker, whose job it is to set the agenda, I don't like his order, and I have that bill that I got pulled out of committee and I want it heard. So we're going to take up some time while we deal with what's the agenda going to be this year or what's going to come up next or what's our agenda for the day. And I'm just telling you, we do have the rule, there are consequences to employing the rule and to embracing the rule and voting the bill out of committee, because the next motion is going to be to bring it up on the agenda, and we bypass the filter. Now this one doesn't need much filter. This bill that Senator Chambers has been talking about does not need much filter because we've discussed this for three years before it passed last year and it's a pretty straightforward policy question. But what about the bill that is 100 percent political, because that can be the subject of a pull motion. And now you're voting on politics stuff and we don't have the benefit of the filter that is the committee process.

[LB495A LB495]

SENATOR CARLSON: One minute. [LB495A]

SENATOR LATHROP: I will just tell you, and I know Senator Chambers is upset with me and he's just going to have to be, because I don't believe this is the right thing to do because today it is a legitimate policy concern and tomorrow it will be politics. And those bills that are put in to make a point to appeal to a narrow constituency that are unconstitutional by any person's standard, a violation of the supremacy clause of the United States Constitution, that bill goes into Judiciary and it will be the subject of a pull motion, or something like it, to appeal to a political base. We don't need it here. We don't need it here. We don't need it here. And it isn't the merits of this bill because that's a fair debate to have, but it's the things that are going to come along next. We don't need it. Thank you. [LB495A]

SENATOR CARLSON: Thank you, Senator Lathrop. Mr. Clerk for a motion. [LB495A]

CLERK: Mr. President, Senator Chambers would move to bracket LB495A until April 9, 2013. [LB495A]

SENATOR CARLSON: Senator Chambers, you're recognized to open on your bracket motion. [LB495A]

SENATOR CHAMBERS: Thank you, Mr. President, members of the Legislature. And, Senator Sullivan, your bill will be dealt with today. When people wait until I've used my three times to speak and then speak, I have to find a way to speak, so the motion is the way to do it. Senator Lathrop is correct that we have agreed on various issues, but when it comes to a process, he and I disagree. I don't have the fear that he has. If the body thinks a piece of legislation is nutty, then let the motion be made and defeat the motion. I do believe, and I can't prove it, that there were people who decided that there would not even be a vote taken on my motion to pull because it was given a specific amount of time on the agenda and I knew that it had a limited amount of time. I did not ask the Speaker to give more time. I did not whine and complain about not being able to get a vote. That happens. The Speaker has to facilitate to the extent he or she can--there may be a lady Speaker someday--and there are people such as myself who will be a roadblock, sometimes just a speed bump, sometimes a detour sign. And the Speaker has to try to surmount or get around or circumvent those things that he or she believes are inappropriate impediments to the action of the Legislature as a body. And I, by the same token, believe that since I was elected to come down here, I have as much right as anybody to conduct my business on the floor of the Legislature as I see fit. Since all of you all are white, save two of us, I've said before, you have each other to look after each other's issues. If one of you can't do it or doesn't want to do it, another one does it. If I don't speak for the constituency I represent, who speaks for it? Nobody.

And I'm not going to let my having worked on occasion with a senator change the way I operate. Former Senator Landis and I got along very, very well on practically every issue, but we differed on occasion and then it didn't get really acrimonious. But Senator Landis pointed out that nobody, regardless of how I worked with that person, was allowed to get so close to me that I altered the way I conducted myself on the floor in terms of what I ought to do, what I ought not do, what I ought to support, and what I ought to oppose. Senator Lathrop spoke after I had spoken, and I disagree with everything he said. What did he say? Among other things, you have a bill that appeals to the fearful. So what did he do? Appealed to your fear. If you let Senator Chambers pull out this bill, which everybody acknowledges has merit, it's not a nutty bill, even though I'm the one who brought it, it has merit but that's not the issue. What will happen if you do it? The key is if you do it. If you think one of those gun bills that clearly violates the constitution is nutty, first of all, I don't know which senator is going to try to pull it, because some have told me that they had to offer some of these bills because of what their constituents were pressuring them to do. They're not about to make a motion to pull it. They can make that motion any day that they want to, if they really believe. And if there's enough support on this floor for that, the bill will be pulled from committee. Senator Lathrop has been on the Judiciary Committee during some of the time that I was on that committee, and others, and you know what I've said? There are bills that I don't like which the committee is going to advance, and I tell them, you're going to have to defend it on the floor, defend it against me, answer all of my questions and explain why the committee brought such an atrocious bill out. But I didn't tell them they couldn't do it. They had the votes. But they know if they bring it out here then I'm going to deliver on what I said. They feel their primary responsibility is at an end when they vote to send something out here which I feel is trash. But being the trashman, I've got to clean it up on the floor. And since these committees are so infallible, I've done work in all of the committees of which I've been a member. I've asked questions, I've made suggestions, I've expressed opposition, I've expressed support. I'm going to start waiting till the bills come out here. Then I'm going to let you see out in the light of day, in the fishbowl, how careful these committees are, how thoughtful they are, and how sometimes they rely on staff and don't read what staff has written, and then read statements that staff has prepared. I don't do that. I'm the one who was elected from my district, not any staff person. And it's my brain that they wanted to rent for the time that I'm here and they expect me to exercise my judgment. And that's why when people call my office for my opinion, unless it's been stated very clearly and categorically, such as I'm opposed to the death penalty, nobody speaks for me, nobody explains me. I do that very willingly and very well. And that's why I'm taking time on these issues because the ones that I deem to be important are the ones I'm going to find a way to take time on. And if you don't like it, tell the Chair I'm out of order and we'll take a vote on that. And then whenever you speak, I'm going to say that person is out of order and I want a ruling from the Chair. I can play any game that you want to play. I can survive under any rules you want to impose, but can you? You could Friday because you had everybody on your side. Some of the things you all said didn't need to be said. I even had some

people come and tell me they like the tone that I set when I offered the motion. That wasn't hard to do because I had a purpose in mind. It was not to castigate, as I've done in the past, and raise a lot of other issues. I dealt with that and I did not put my light on to speak after I offered my motion. I did not have my light on to speak because I wanted to let everybody else say everything they had to say and eat up all the time. Then when I got no vote, so what? Is that the end of the world? That's not even the end of the session. It wasn't even the end of the day's consideration. It wasn't even the end of the morning part of the session. I have priorities. I know how to rank things based on their importance when I hold it up to the things that I truly value. And although my way of showing it may not comport with the way you'd show it, I respect the Legislature as an institution. And I'm going to demonstrate, by my example, the types of things that are supposed to take place within a Legislature while it is carrying out its business: full robust debate, not treating grown people like they're little children, although when I want to taunt I will say I could find five little kids on the playground and they'd have more sense than all of you put together. And then when you get angry, that proves it. That's childish, but that's the way we do. That's what happens here and it's going to continue to happen. And at some point Senator Lautenbaugh's idea may not look so bad to you--invoke cloture early because you're eager to get out of here, you're eager to try to put me in my place. But if you start voting cloture early, I will laugh at you, "ho-ho-ho-ho," like Santa Claus, because I bring you great tidings of good joy, which shall be to at least one person because I will have won. Suppose everybody on this floor... [LB495A]

SENATOR CARLSON: One minute. [LB495A]

SENATOR CHAMBERS: ...would use discretion in determining what bills would be brought. These senators don't know when or how to tell a constituent, no, that is not what ought to be before the Legislature, that is not what ought to take the Legislature's time. But you know what these senators count on? Me doing the heavy work and stopping it and they don't have to. Then they tell their constituents, even lobbyists do it: well, you know how Ernie is; you know how Senator Chambers is; did my best. And then they don't have to work but they get the money; senators get credit. Well, what do you expect? Look what Senator Chambers does. Well, there are 48 other people here. Let those 48 other people do their job. And if I'm wrong, put me in my place. And if you put me in my place, do it according to a rule. Set the rule and let me know that this is the rule by which we put Ernie in his place, and then invoke it. Then I have to show you how I get around it. Thank you, Mr. President. [LB495A]

SENATOR CARLSON: Thank you, Senator Chambers. Senator Lautenbaugh, you're recognized. [LB495A]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. I wasn't going to speak again, and again I'll not be long. But I think we're being sold a danger

here that doesn't exist and I'll tell you why. The only way that things go awry, if you will, on the floor, and sometimes the awry is in the eye of the beholder, is if a majority of you votes to make it so. And we're being cautioned that something blatantly unconstitutional, there's a danger of that coming to the floor. Well, then 25 of us would have to decide it's worth doing. And it seems, if it's really out-and-out nutty or it's designed to appeal to narrow interests but it commands a majority of the Legislature, then I question how narrow the interest is, because usually the majority is the standard by which we pass bills. The really narrow ones I don't think get 25 votes, which is what it would take to pull from committee. I don't even remember what it takes to change the agenda, off the top of my head. But, folks, there's a point at which we have to trust the will of the whole. I mean somehow we do manage to advance bills with 25 votes, often more; sometimes we don't advance bills with 25 votes. But out here the majority rules and that's okay. That's kind of how this is supposed to operate, a casual perusing of the rules would suggest. So I don't share the fear. And I would note in the past, and this might sound crazy but okay, there have been states that passed things that the federal government said, no, by our supremacy clause, you're out of order. But eventually what that state advanced came to be the law of the land, came to be seen to be manifestly just. Now I'm not saying anything we have this year rises to that level, but there may come a day when you may want to advance something that may be constitutionally suspect, according to the federal Constitution, the U.S. Constitution, but there may be a greater wrong that you're trying to call attention to than preserving current constitutional law. And we do amend the Constitution at the federal level with one mechanism that involves all the states speaking out, and a way to do that sometimes is to get the ball rolling by passing something that may actually be in contravention of prevailing federal law. Now I know there are a few of you who are thinking, oh my gosh, I didn't know Senator Lautenbaugh lived in a gun shack down by the river and was hoarding food for the coming apocalypse. Well, I'm not and I don't. But I'm just saying we do at some point have to trust the majority, and if the rules provide for a simple majority vote on a point then that shouldn't be something that is seen as a mysterious, you know, "break only in case of fire" type provision. And I don't think anytime we use any one of the rules we open up the floodgate to that rule being constantly used. I don't think it works like that. Because, again, it would take 25 of you every time, at least, to do something like that, and it's hard enough to get 25 together sometimes on a bill that's actually on the agenda, by design. But a majority can and should rule, and the rules permit just that. Thank you, Mr. President. [LB495A]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. Those wishing to speak include Chambers, Lathrop, and Wallman. Senator Chambers, you're recognized. [LB495A]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, there have been times when I disagreed with things the federal government did. I'll give you an example. I've mentioned it before. They set the speed limit exceedingly low, but it

was on the system of interstate highways which the federal government control. So what I did was to get a bill passed by the Legislature, not repealing the speed limit but setting a fine that was so miniscule that commerce and travelers could move at a speed at least ten miles above the posted limit without great financial cost and no points off the license. That's how you make the challenge. I didn't say at any time the federal government could not impose the 55-mile-an-hour speed limit. I've told you about the expenses that you get, and you don't mind me having done that; had to fight against certain legislators, override a Governor's veto, and counteract several Attorney General's Opinions which said we could not get expenses during session. Suppose I follow what Senator Lathrop is telling you ought to be the case now, or the rest of you all, who if you spoke would go (clucks like a chicken). You know what that is? A chicken. If I was a chicken, you wouldn't be getting expenses. You'd be crying because you can scarcely afford to be here. You forget that, don't you? But I was against what everybody said could be done, except the Nebraska Supreme Court, because I can read the law and I can read the constitution. When there was a grand jury convened looking into what is called the Franklin Credit Union scandal, the grand jury exceeded its authority by writing a scurrilous report and releasing it to the public, and the district judge agreed to let it happen. I went to the district court and lost. I thought it should not have been released. I went to the Nebraska Supreme Court and won. The whole report was completely expunged. If I listened to what the experts said, that would not have been done and that trash would still be on record. The city of Omaha had a council that thought they could get some money if they would put red light cameras at various intersections. And because of the structure of Nebraska law, their ordinance was unconstitutional. The city attorney said it was constitutional, various other people said it was constitutional, but I felt it wasn't so I took it to the judge. And guess what happened? The judge upheld my presentation, because I didn't just go there and say it's wrong, it's wrong. I analyzed the law, I applied the statutes, and I applied the constitution. You all think I don't know anything, but I learn the rules before I get in the game, that's one thing I know, and I have noteworthy success. There are other examples that I can present of things I did as a member of this Legislature, but I have time to do that. What I'm dealing with and is an issue that was just a few days ago, and it's not too far from people's ability to recollect it even if they have a short attention span ordinarily. These committee Chairs are...you think they got more intelligence than we do? Some of them don't even know as much about the subject of their committee as some of us know. They're like popularity contests. We all know the politicking that goes on to try to get somebody a position as a Chair. We all know it, but you're going to play like it doesn't happen? You going to play like we don't know it? Then somebody speaking out of school when talking to... [LB495A]

SENATOR CARLSON: One minute. [LB495A]

SENATOR CHAMBERS: ...all those who know it about what happens, you all do it that way but I don't. You don't own me. You're not my parents; I'm not your child. But I'll treat

you like children sometimes. You know why? Because you put yourself in that position--scared of your shadow. Senator Lathrop says there's something out there, witches and goblins and "ghosties" and beasties and things that go bump in the night. Then you get terror-stricken. And you think something is wrong with me because I'm not crazy like you are, run around here afraid? I invite people, do your worst, and you have opportunities to do that. But I shall have my pound of flesh. Thank you, Mr. President. [LB495A]

SENATOR CARLSON: Thank you, Senator Chambers. (Visitors introduced.) Returning to debate, Senator Wallman, you're recognized. [LB495A]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. First of all, I vote against the bracket motion. And second of all, when we say we have people bring bills or information to us what they want, that's supposed to be our job. We're supposed to be servants of the people and that's why we're elected, to listen to the people. And the committee Chair thing and all this, it's a system set up and it might not always work okay but it works. Thank you, Mr. President. [LB495A]

SENATOR CARLSON: Thank you, Senator Wallman. There are no other senators wishing to speak. Senator Chambers, you're recognized to close on the bracket motion. [LB495A]

SENATOR CHAMBERS: Thank you, Mr. President. Senator Wallman, you don't have to worry about voting on this motion because I intend to withdraw it after I have part of my say. First of all, I do respect the position of Speaker; I respect the person who currently holds that position. But I owe greater fealty to my constituency. And as I've said, that constituency does not comprise only the people in the 11th Legislative District but the people in this state. And the people in this state may disagree with what I do and have contempt for what I say, but I'm going to do and say what I think is right and you can count on that being my motivation. When I am struck, I think it is right for me to strike back. When I was a little child, I believed in that turn the other cheek. And when I got in fights I never let my parents know it, because in the church I attended you weren't even supposed to fight to defend yourself. And I was an obedient child, but I was not an insane child. If somebody was going to lay hands on me, I had the right to do to them what they did to me. Do you know why? Because one of the things that I was taught in church is to do unto others as you would have them do unto you, and my belief as a child was that they had been taught the same thing. So if they put their hands on me, that's what they want me to do to them. So I'm fulfilling the scriptures and the wishes of that person who put his hands on me. That's always masculine because I didn't fight girls when I was younger. And the most pain that was ever inflicted on me was inflicted by a girl. I don't even remember all the fights that I had, but I was going to Lothrop School and these two girls were arguing and I was going to break up the fight. So I took this one girl by her arms and I told her, she shouldn't fight. I'll never forget. She had little

white anklets, little socks, frills around the top. You know why I noticed that and she had on patent leather shoes? Now I don't believe that those patent leather shoes had steel toes but she kicked me on my shin and I never felt such excruciating pain up to that time in my life, and I still remember it now. And I have had things that caused me more physical pain than that, but it happened at a time when my young mind was like a sponge but different from a sponge. Not only did it absorb that but it encased it like these little creatures are encased in amber and you find a completely intact little critter in amber that's thousands of years old. I'll never forget that. But I didn't fight girls. I've never laid a violent hand on a female and I never will. Don't you all get the wrong idea because I know how to restrain without striking. But at any rate, on the floor of this Legislature I will do what I think ought to be done. You all hold to the same position but your views are different from mine. The desires of your heart are not the desires of my heart. That's why Senator Lathrop and these other people will engage in overkill, because they think that's what they should do and they do it unapologetically. But you want me not to do what I think I ought to do. I'm outnumbered by you. You ought to be pleased to have somebody in your midst who will stand up to you, who will not let you be 100 percent total bullies, who will treat you in such a way that you feel that you're being bullied, gives you a chance... [LB495A]

SENATOR CARLSON: One minute. [LB495A]

SENATOR CHAMBERS: ...to say poor, poor pitiful me, speaking of yourself. And I think that is a bit pathetic. Mr. President, I withdraw that motion. [LB495A]

SENATOR CARLSON: Thank you, Senator Chambers. Without objection, motion is withdrawn. We return to discussion on LB495A. Are there senators wishing to speak? Seeing none, Senator Sullivan, you're recognized to close. [LB495A]

SENATOR SULLIVAN: Thank you, Mr. President. And just very briefly to remind us what you are voting on, LB495A, we are continuing the practice of allocating lottery dollars and some General Fund support to support Early Childhood Grant Programs from three to five and now also birth to three. I ask for your support of LB495A. [LB495A]

SENATOR CARLSON: Thank you, Senator Sullivan. Members, you've heard the closing on LB495A. Question is, shall it advance to E&R Initial? All those in favor vote yea; opposed vote nay. Have all voted who wish to vote? Record, Mr. Clerk. [LB495A]

CLERK: 39 ayes, 0 nays, Mr. President, on the advancement of LB495A. [LB495A]

SENATOR CARLSON: LB495A does advance. Mr. Clerk, next item. [LB495A]

CLERK: Mr. President, LB6A on Select File. Senator Murante, I have no amendments

to the bill, Senator. [LB6A]

SENATOR CARLSON: Senator Murante for a motion. [LB6A]

SENATOR MURANTE: Mr. President, I move to advance LB6A to E&R for engrossing. [LB6A]

SENATOR CARLSON: Members, you've heard the motion. All in favor say aye. Opposed, the same. The bill does advance. Mr. Clerk,... [LB6A]

CLERK: Mr. President,...

SENATOR CARLSON: ...items for the record?

CLERK: ...thank you very much. New resolutions: Senator Larson offers LR139, LR140, LR141; Senator Mello, LR142. All those will be laid over at this time. Education Committee, chaired by Senator Sullivan, reports LB410 to General File with committee amendments attached. I also have an amendment from Senator Mello to LB97 to be printed. That's all that I have, Mr. President. (Legislative Journal pages 930-936.) [LR139 LR140 LR141 LR142 LB410 LB97]

SENATOR CARLSON: Thank you, Mr. Clerk. Next item.

CLERK: Mr. President, LB44 on General File is a bill originally introduced by Senator Ashford. (Read title.) The bill was introduced on January 10 of this year, referred to the Judiciary Committee for purposes of conducting a public hearing. The bill was advanced to General File. There are committee amendments pending, Mr. President. (AM151, Legislative Journal page 590.) [LB44]

SENATOR CARLSON: Thank you, Mr. Clerk. Senator Ashford, you're recognized to open on LB44. [LB44]

SENATOR ASHFORD: Thank you, Mr. President and members of the Legislature. LB44, with the accompanying amendment, AM151, was advanced by the Judiciary Committee by a 6 to 0 vote. LB44, as amended by AM151, which becomes the bill, is a bill that seeks to add a minimum number of years for Class A felonies when applied to a person under the age of 18 years to bring the Nebraska statutes into conformity with the June 2012 United States Supreme Court ruling in the case of Miller v. Alabama. In Miller, the court ruled that imposing mandatory life sentences without the possibility of parole on juveniles violates the Eighth Amendment of the United States Constitution. Let me at the outset emphasize that a court in Nebraska, under LB44, as amended by AM151, if it should pass and become law, may sentence a juvenile to life imprisonment without parole. What this bill, as amended by AM151, does is provide for more

discretion in the trial court in determining the sentence. So, for example, if there is an accessory to a 1A felony who was tried and convicted of such a felony under the felony murder rule, which is the law in Nebraska, and that juvenile is 14 or 15 years old, the court would have the discretion, after hearing all the evidence and looking at the criteria, to sentence that juvenile to a 30-year sentence. It is unlikely, if not, in my view, impossible for a court in this state to sentence a juvenile who has directly committed a murder, a 1A capital offense, to be sentenced to that 30-year term of years, but it does provide that option. And it is, in my view, directly consistent with the trend of thinking that we've discussed on this floor before, and it's clearly stated in Miller v. Alabama, which is that the science of the day unequivocally has established that juveniles do not have the maturity, that they have the impulsivity and other factors that make them different from adults, and that the commission of such a crime of a 1A felony does create issues that are not extant when we deal with adults. The Eighth Amendment guarantees individuals the right to not be subjected to excessive sanctions and requires that punishments be proportionate to the crime committed. In this case, the court has determined, in Miller v. Alabama, that proportionality, a requirement of the U.S. Constitution, must take into account the mitigating qualities of youth. If we were to only have the option of 60 to life, mandatory 60 to life, or even 60 to life without it being mandatory, we would be restricting, in my view, excessively, the options given to the trial court and to the system to determine the proper sentence. The court's rationale in Miller extended from previous cases, Roper v. Simmons and Graham v. Florida, detailing how juveniles are different from adults, prone to impulsive behavior and less able to understand the full impact of their actions, and why this makes them less culpable for their crimes, even when the crimes are egregious. The court ruled in Miller that judges need to examine all the circumstances of a case prior to sentencing. Therefore, sentencing schemes that mandate life imprisonment without the possibility of parole for juvenile offenders violates the Eighth Amendment. Again, let me make clear again that this bill does not negate the ability of a trial court to sentence a juvenile, an individual under 18, to life imprisonment without the possibility of parole. As the state of Nebraska only provides today for the punishment of life imprisonment for the conviction of a Class A felony, the state will need to include a minimum sentence of some specified length of time to provide the...to meet the minimum standards of the Miller case. And our committee, after discussing many options--20 years, 40 years, 30 years, whatever it is--came up with 30 years as the appropriate minimum sentence. It is true and you'll hear in arguments today that...to the effect that a 30-year sentence means, in effect, a 15-year sentence with good time. That can be alleviated by the trial court in a myriad of ways, whether it's by a 50-year sentence, a 30- to 50-year sentence for a juvenile, would have a 25-year minimum. A 30- to 60-year sentence would have a 30-year minimum sentence, because you take half of the minimum amount...or the maximum amount to get to the actual sentence. So the trial court is not...does not and in this...with this bill will not be precluded from giving a sentence of that term, whether it be life imprisonment, 40 years, 50 years, or 60 years, dependent upon the crime that's committed. Under AM151, which becomes the bill, the minimum term of years for

juveniles sentenced for a Class IA felony would be 30 years, and the maximum penalty though would remain, as I said, at life imprisonment. AM151 also requires that the sentencing court consider mitigating factors on behalf of the juveniles before issuing the sentence, and these factors are set forth in the case of Miller, in the Miller case, and I think also are consistent with anyone's idea of common sense in dealing with juveniles: the age at the time of the offense, the impetuosity of the convicted person, the convicted person's family and community environment, the convicted person's ability to appreciate the risks and consequences of their conduct, the convicted person's intellectual capacity, and the outcome of a mental health evaluation of the convicted person conducted by an adolescent mental health professional licensed in this state. AM151 would also require the Board of Parole to give consideration to the following factors, in addition to any other factors they deem relevant, when a person who was convicted as a juvenile is being reviewed for the granting of parole and those factors are: the offender's educational attainment, the offender's participation in available rehabilitative and educational programs while incarcerated, the offender's age at the time of the offense, the offender's level of maturity, the offender's ability to appreciate the risks and consequence of his or her conduct, the offender's intellectual capacity, the offender's level of participation in the offense, the offender's efforts toward rehabilitation, and any other mitigating factor or circumstance submitted by the offender. These changes in this bill, as amended by AM151, ensure that we are in compliance with the Miller ruling. There are cases, cases have been filed around the country to address this issue. Iowa, for example, not by legislative enactment but by gubernatorial decision, adopted the 60-to-life standard. That decision has been and will be decided by a court at some later date. It is my understanding and my belief that a 60-to-life standard will not meet the Miller case standard. But despite whether or not it would or wouldn't, what we're trying to do in this bill with this amendment is to give to the trial judge and the Board of Parole the discretion it needs but with the clear understanding, with the clear understanding that the most heinous crime committed by a juvenile can... [LB44]

SENATOR CARLSON: One minute. [LB44]

SENATOR ASHFORD: ...result in a sentence of life imprisonment without parole. The judge may give such a sentence, may construct such a sentence. But what it does do, again, members, what it does do is it recognizes the science of the day. And it's not just the science of this day but the science of how we deal with juveniles that has driven our decision-making process on juvenile justice for a number of years but is now finally in Nebraska, I believe, coming into focus; that as we deal with a whole range of juvenile justice reforms, it is imperative, it seems to us, to me and to the committee with its 6-0 vote on this bill, that we are making a clear decision that juveniles are different from adults; that when they commit a crime, albeit heinous and very difficult to understand, that juveniles and adults are different. [LB44]

SENATOR CARLSON: Time. Thank you, Senator Ashford. Do I take it that you have

opened on AM151 as well as LB44? [LB44]

SENATOR ASHFORD: I have. Yes. Thanks. [LB44]

SENATOR CARLSON: All right. Thank you, Senator Ashford. (Visitors introduced.) Senator Ashford, do you want additional time for the opening on AM151? [LB44]

SENATOR ASHFORD: Just very briefly, Mr. President, just so again there is no misunderstanding. This does get complicated because sentencing law is a very complex part of the law. And the other issue I would focus on and emphasize is that when we start to compare what we're doing in Nebraska versus some other state, we have to understand that every state's sentencing regimen is different. So, for example, in Nebraska, one may ask, how does a judge ensure that a juvenile under 18, an individual under 18 that commits a...or is convicted of a 1A felony would spend the rest of his or her life incarcerated? And the answer is that a judge could sentence that juvenile to life to life. Life to life means life to life. There is no minimum sentence available to that juvenile and they would spend the rest of their lives incarcerated. So the option remains there. I would also make the point that parole, parole is...first of all, we have a system where we have judges chosen by the Governor. We have a Parole Board selected by the Governor initially and then confirmed by the Legislature. These individuals do not operate in isolation. They are of the community where they sit. And the decisions that they make reflect the community conscience on these various matters. So even though we are giving, in this bill, judges some discretion for...in the sentencing regimen, we are doing so with the clear understanding, in my view, that those individuals who are making these decisions are individuals who live in the communities, the judges who live in the communities where they sit. And the Parole Board, if it comes to a Parole Board decision, which in many cases it would, the Parole Board is a, in many senses...in some significant sense, a political body appointed by the Governor and approved by the Legislature. So again I would just conclude, Mr. President and members, that this bill, in my view, is critical. It is critical to a clear and firm understanding that juveniles are different from adults; that they commit very, very terrible, heinous acts for which in many cases the only responsible punishment is life imprisonment. But there are also many juveniles who commit very, very difficult and heinous acts where the ability to rehabilitate that person is greater. And certainly as when we deal with very young juveniles, 12-, 13-, 14-, 15-year-olds who do commit these kinds of acts, that the opportunity for rehabilitation in many of those cases is very real. And by giving to the judge and subsequently to the Parole Board the ability to evaluate, with very clear criteria, how that juvenile is doing is reflective, I believe, of our values as a state and certainly consistent with what the Supreme Court has very, very clearly set forth in its Opinion, not only in the...in Miller v. Alabama but in prior cases dealing with the death penalty and other punishments that the Eighth Amendment requires. It's not discretionary. The Eighth Amendment requires that we deal with juveniles differently than adults. And with that, Mr. President, I would move the adoption

of AM151 to LB44 and the advancement of the bill. [LB44]

SENATOR CARLSON: Thank you, Senator Ashford. Members, you've heard the opening on LB44 and underlying committee amendment, AM151. Senator Lautenbaugh, you're recognized to open on the amendment to the committee amendment, AM874. (Legislative Journal page 912.) [LB44]

SENATOR LAUTENBAUGH: Thank you, Mr. President, members of the body. And I don't bring this amendment lightly and I do agree that we do need to act in this area this year. This amendment, in its most basic essence, takes out some language regarding mitigating circumstances that is added by the committee amendment, but most importantly changes the number of years from to 30 to 60. And realistically what we're talking about here is there is no mandatory minimum sentence specified in the bill as it is written or amended, as I read it. And a 30-year sentence would mean a person would be eligible for parole possibly in slightly under 15 years. And that amount of time served is less than the mandatory minimum in another crime I can think of and some other crimes where we have sentencing guidelines as well, which would be most of them. The example that comes to mind would be a second offense juvenile sexual assault, where we have a mandatory minimum of 25 years. These cases we're talking about basically deal with murder and I have a real problem with the minimum sentence being such that the time served could be less than the mandatory minimum for a second offense sexual assault. And this is a very serious thing and I think it's important that we all...and, you know, I'm an attorney, some of you are not, I don't practice in this area so this is a struggle for me as well, but we have to understand that if we do not say a mandatory minimum, you should basically cut the numbers in half in your own mind. And if I'm incorrect about that, you know, I'm sure some will correct me on it, but I don't think I am. And we're dealing with the most serious crimes imaginable. We have many juveniles or people that were sentenced as juveniles currently incarcerated and the crimes are horrific. You have to be clear on this, we are dealing with the most horrific crimes. One woman or one gentleman was sentenced after shooting a woman while trying to take her purse. Another was sentenced after an eight-year-old boy victim was strangled with a telephone cord. Another was sentenced after the victim of a robbery attempt was put in the trunk of the car, which was then set afire. These are horrific things. And I won't go down the list and go on and on about them, but we certainly aren't talking about trivialities here, and I don't think anyone has suggested that either. This is a very serious policy debate that we must have and likely must have it this session, based upon the Supreme Court's ruling, the U.S. Supreme Court's ruling, so we have to act. And I come at this from the position that the amount of years set forth in the committee amendment is just not adequate for these offenses. So again, the crux of the amendment is that it takes the 30-year minimum that's set forth in the committee amendment and changes that to 60, which would mean approximately 30 years would be served. Another way of stating that would be a mandatory minimum of 30 years, which may be a more proper amendment. It may be amendment to follow...an amendment to follow, excuse me. But

there will be no occasion for levity in this debate. This is one of the most serious things we're going to deal with this session and we absolutely, positively have to get it right. And this is, I guess, why we are here and what we are charged with doing, weighing things like this and bringing our judgment to bear. And I would suggest to you that we send a message, we do, when we talk about what the sentence will be for a crime. And we say that people don't take that into account, but we know they do. We know that sometimes in gang shootings that the word is, well, let the juvenile be the shooter because the sentence will be different. But we have to say what the sentence is for the most horrific crimes, and that's what this bill is about. And I would urge you to support this amendment. I would urge you to see to it that we do have a minimum of 30 years. And I see this as a simple means of...an effective minimum of 30 years, excuse me, and I see this as a means of protecting society and restating our values. And I know this is different than the adult penalty and as well it should be, but we do have to pick where it ends up and I'm offering an alternative to the committee amendment. Thank you, Mr. President. [LB44]

SENATOR CARLSON: Thank you, Senator Lautenbaugh. The floor is now open for debate. Senators wishing to speak include Burke Harr, Chambers, Nordquist, Adams, and others. Senator Harr, you're recognized. [LB44]

SENATOR HARR: Thank you, Mr. President, members of the body. I think we first need to clarify the record a little bit. There was talk of second offense sexual assault would warrant 25 years. Well, that's right. But what's wrong or what's left out is the fact that in that situation you would have to have a defendant who is over the age of 19. So they would have to be over the age of 19 and the defendant...or the victim would have to be under that age of, I believe it's, 15. So to have that happen twice, it would definitely be an adult in that situation. This...we're going to hear a lot of gory, awful stories of what juveniles have done, and that's what they are--juveniles. That's not what this is about. This bill is looking at two things: Number one, what do we do when that brain isn't fully developed; how do we treat that person? The Supreme Court has already said we have to treat that kid differently because of that. And we, as a body, in the past have done that. Two years ago we had...we went from parental advice to parental consent on an abortion. Why? Because we said the brain is still developing and so we treated them differently. That's what this is doing. Now the question is what is the proper judgment, what is the proper time for this kid to be sentenced? And that's a great question and I am going to look forward to the debate because, I'll be honest with you, I don't know what it is right now. I'm not sure if 60 is too much and 15 is...or 30 is too little. So I'll be interested in what others have to say. But let's think about the situations where this will occur. It's not going to occur where a juvenile sexually assaults another kid and then kills that person. That doesn't warrant the minimum sentence. The type of situation that will warrant this mandatory...or this minimum will be the situation where you have a 25-year-old and a 15-year-old going into a convenience store together to rob it: 25-year-old has a gun; 15-year-old does not. Clerk pulls out a gun, or who knows,

maybe he doesn't even pull out a gun, but the 25-year-old shoots and kills the clerk. Under the felony murder rule, that 15-year-old is as culpable as the 25-year-old, having done nothing wrong, not pulled a gun, not even possessed a gun. That's the situation we're looking at. We're not looking at the worst-case scenario. In the worst-case scenario, I trust our judges, I trust our Parole Boards not to let that juvenile out. What we're looking at is situations where you have a kid who is being manipulated by someone older. That's where we're really going to focus. That's where we need to focus the conversation. And in that situation, what do we want that sentence to be? What do we think is fair and what do we think is just? Is it 15 years? Is it 20? Is it 25? Is it 30? I don't know. Remember when we're talking about terms, basically what you want to do is take the top...that number like 60 and divide it in half, and then for every 10 years served you get a year, is basically how it works. That's oversimplification, but that, as a general rule, that is how it works. And that's so when you're thinking about what you think is right and wrong, keep that in mind. It's half, plus a year for each ten years. I am very excited to listen to this debate. I'm not sure if I can support Senator Lautenbaugh's amendment. I have a tough time at this point, but I will be excited to listen to it. Thank you very much. [LB44]

SENATOR CARLSON: Thank you, Senator Harr. Senator Chambers, you're recognized. [LB44]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, this is a complex issue. First of all, items that Senator Lautenbaugh wants to remove from the bill were not created by the committee out of whole cloth. I don't know how many people actually read the Supreme Court's decision, but these are provisions, these are factors that should be taken into consideration, said the court. If you give guidance to the judges statutorily, then you won't be confronted with a set of circumstances where judges do not consider those elements that the U.S. Supreme Court said must be considered. Here's why that consideration has to be given, and this matter will take time. We have to deal with it a small piece at the time. The reason it is unconstitutional to provide only life without parole to a juvenile who committed murder is because the Supreme Court has said you have to individualize the treatment of each defendant in this category, which means you look at the characteristics of the individual, you look at the circumstances of the offense. And a Legislature which says if a person is charged with and convicted of whatever that state says constitutes first-degree murder, anybody who fits into that category gets an automatic life sentence without parole, that is unconstitutional because you're not customizing what you're doing to the individual. It's called proportionality: Does the punishment or sentence imposed accord with the offense that was committed? To determine that, you look at characteristics of the individual. This is where the age, the impetuosity, the unwillingness or inability to consider consequences, the lack of mental and psychological development which has been demonstrated by, as the Supreme Court said, psychology and brain science, when the matters are taken into consideration. Two apparently identical acts can result

in radically differing sentences once you consider the characteristics of the perpetrator. What Senator Lautenbaugh mentioned when he talked about this sexual assault situation, penalties put in the statutes are aimed at adult perpetrators. The U.S. Supreme Court took note of that fact. None of these laws were put in effect considering the factors that create lesser culpability in a juvenile who commits the same act. When you have two judicial systems, in effect one that deals with adults, one that deals with children, it makes no sense to prosecute children as though they are not children, and that's one of the things the U.S. Supreme Court had trouble with. When it comes to this issue of parole eligibility, Senator Lautenbaugh is correct in that the minimum sentence is cut in half in order to establish when a person becomes eligible for parole, not when a person must be released on parole. That's why the bill says that there must be periodic Parole Board hearings and reviews. A person need not ever be paroled based on the requirements of a minimum sentence. When you have a maximum sentence in a term of years, then you begin to use the good time to reduce that maximum sentence down to a point where, when a person has served all of that time, he or she must be paroled. If a person has a life sentence and the Parole Board does not act, the person would have to try to get the Pardons Board to commute that life sentence to a term of years. So the Parole Board is not in a position to act willy-nilly and arbitrarily. When you review the way that the Parole Board in Nebraska, and especially the Pardons Board, have behaved, there is no likelihood, there is not even a rational possibility that a person sentenced under this law to 30 years to life is going to get out after serving 15 years. You'll notice that the County Attorneys Association supported this bill. Everybody knows that something must be done based on what the U.S. Supreme Court said. So before I would submit to what Senator Lautenbaugh is trying to get you to do, I will kill the bill. And I'll have help from those who want to see something done kill the bill. Then it falls into the hands of the court and they review how long these people have already served... [LB44]

SENATOR CARLSON: One minute. [LB44]

SENATOR CHAMBERS: ...and whether or not a sufficient time has been served based on the concept of proportionality. And any of them sentenced under the existing law to a mandatory life without parole is going to have that sentence set aside by the court. Every one of them that goes on appeal is going to have that sentence set aside automatically because it's unconstitutional. Then it becomes the job of the court to establish an alternative sentence. There is no alternative sentence for these juveniles, so it's up to the court. If you take 60 years, I vow that unless I die I will kill this bill. And you know why I say I will do it? Because I will take all the time necessary. Senator Lautenbaugh is right when he says there is no basis for levity in how we handle this bill. We are extremely, or should be, serious about what we're doing and I'm laying my cards on the table face up. [LB44]

SENATOR CARLSON: Time. [LB44]

SENATOR CHAMBERS: Thank you, Mr. President. [LB44]

SENATOR CARLSON: Thank you, Senator Chambers. Senator Nordquist, you're recognized. [LB44]

SENATOR NORDQUIST: Thank you, Mr. President, members. And thank you, for those that have made comments so far, for the thoughtful nature of those comments on an issue that certainly is very weighty. I rise in support of the committee amendment, partly because as a society and as a legislative body we have long held the precedent that adults and juveniles are not created equal; that we...and the sentence of life without parole up to this point has very much ran against that consensus that we've held. We know that when we apply a sentence of life without parole to a child we are writing that child's life off forever. And I think probably better than my words, I read a great Op-Ed that was in the World-Herald the beginning of March from a mother who very personally was impacted by this, and I just want to share a few of her thoughts. Mona Schlautman is her name. She says: Twenty-one years ago, a 17-year-old youth kidnapped my 15-year-old son, Jeremy Drake. Within hours my son had been shot to death in a park in northeast Omaha. That youth, Jeremy Herman, and a 19-year-old were later convicted and sentenced to life in prison without the possibility of parole. Even as I mourn the death of my beloved son, I also knew...I also suffered from the knowledge that Jeremy Herman, who at one time had been my son's friend, would die in prison. I definitely thought he deserved time in prison and wanted to make him stay there as long as it took for him to see the errors of his way, sincerely repent, and make amends as best he could. The sentence he received seemed very unfair. As I arrived at my belief that young people deserve a second chance, based on my faith, including the Christian mandate of forgiveness, I also...it also is just good public policy. Keeping a young person in prison for life is a costly undertaking that robs the community of the value...of valuable tax dollars that certainly could be better spent on education as well as a multitude of other needs. In addition, we are missing the societal and community contributions these young people have to share. Who better than they to reach out to our troubled youth? I raised four children and taught school in junior high. I'm very familiar with the development of teenagers and realize that all children are capable of making poor decisions. Sadly, some of those decisions have very serious consequences. It is also a fact that children are more susceptible to outside pressures and usually cannot extricate themselves from harmful environments in the same way that adults can. I know that Jeremy Herman grew up in a less than ideal situation and this undoubtedly had an impact on his development. Yet, youth also are uniquely able to change, and he is proof of this. Jeremy Herman and I communicated on a regular basis during the last several years of his incarceration. I, along with my family, also took part in a victim-offender dialogue at the prison, a mediated conversation that allows us to talk about his crime and how it has impacted our family. Because I believe he has been rehabilitated, I testified on his behalf to the Pardons Board on numerous occasions in

the hope that his sentence would be commuted to set a number of years with the possibility of parole. Last spring I went to Washington, D.C., to witness the arguments on Miller v. Alabama and to publicly express my support for age-appropriate sentencing of youth. I stood alongside others who had lost loved ones to youth violence, as well as formerly incarcerated youth, and the parents, siblings, and partners of those sentenced as children to life in prison without parole. We share a desire to see reform in the ways that we have held young people accountable for the harm that they cause. [LB44]

SENATOR CARLSON: One minute. [LB44]

SENATOR NORDQUIST: We believe young people have the capacity for redemption and do not believe they should be sent to prison for the rest of their lives. From my perspective, the Supreme Court made the right decision in acknowledging that children are different from adults. This should be acknowledged and considered when they are sentenced. It is now time for Nebraska to follow the Supreme Court's lead, not just throw our children away forever. Instead, we should...we need to ensure that our policies focus on rehabilitation and preparation for reentry to society. Those words certainly express in a very personal way much stronger support for this bill than I ever could, but the sentiment is pretty simple. There certainly is a need. There certainly is a need for young people to be held accountable for their poor decisions, but there is a balance with that need and I believe that the committee amendment to LB44 is the appropriate balance to make sure that youth have...truly have a possibility to be rehabilitated. [LB44]

SENATOR CARLSON: Time. [LB44]

SENATOR NORDQUIST: Thank you. [LB44]

SENATOR CARLSON: Thank you, Senator Nordquist. Senator Adams, you're recognized. [LB44]

SPEAKER ADAMS: Thank you, Mr. President. Members, I rise to speak on this, actually to ask questions on this of Senator Ashford. And as a preface to those questions, I would tell you, like many of you, far from...I'm far from having any expertise on these kind of legal issues. What I suppose I could do, and I won't, is to, as I think Senator Harr said earlier on in his comments, describe for you a situation that happened several years ago in my district that still has a community and an impacted family on the edge of their seats as to what we may do. But I'm not sure that, and I don't mean to devalue the anguish of that community or that family, but I don't think that we gain anything today by going through those kind of details. We need to stick with the issues at hand. Now the questions I have I think are fairly simple and, frankly, Senator Chambers answered one of them, Senator Ashford has already answered them, but I'm going to ask them again, not only for my sake, maybe for some of you, but honestly, for my constituents as well.

Senator Ashford, would you yield to a question? [LB44]

SENATOR ASHFORD: Yes. [LB44]

SPEAKER ADAMS: Senator,... [LB44]

SENATOR CARLSON: Senator Ashford. [LB44]

SENATOR ASHFORD: Yes. [LB44]

SPEAKER ADAMS: ...if a judge were to determine that they were going to give a life sentence,... [LB44]

SENATOR ASHFORD: Yes. [LB44]

SPEAKER ADAMS: ...is it possible for that judge to give a life sentence without parole? [LB44]

SENATOR ASHFORD: Yes. [LB44]

SPEAKER ADAMS: Okay. So in essence, what you're saying is in this, what this language is saying, we're building a floor and creating a range for judges, and that's the mandate of the U.S. Supreme Court. Is that correct? [LB44]

SENATOR ASHFORD: Correct. And there are 17 individuals in the corrections system now who were convicted of 1A felonies as juveniles and there are very few, if any, we're trying to find maybe one case where a juvenile that was given such a sentence was ever paroled. [LB44]

SPEAKER ADAMS: Thank you. My next question then, and I'm going a little bit out of sequence because you've touched on it, to the best of your knowledge at this point, if you are willing to speculate, what happens, when we change this legislation, to those individuals who are currently incarcerated and serving sentences for crimes committed under our existing statute? [LB44]

SENATOR ASHFORD: It's impossible to predict what a court would do, but it is...it seems to me unlikely that the 17 (inaudible) have to review the 17 cases. But in all those cases where there's life imprisonment without parole now, those individuals, I can't predict, but based on our history we have very rarely ever paroled someone that has been convicted of that kind of...a juvenile that was convicted of a 1A felony and given a life sentence. [LB44]

SPEAKER ADAMS: So is it... [LB44]

SENATOR ASHFORD: In fact, only one that I know of. [LB44]

SPEAKER ADAMS: ...is it conceivable, in your mind, that if these persons were granted a resentencing that a judge may look at the circumstances and give them virtually the same sentence they have right now? [LB44]

SENATOR ASHFORD: They could. I mean they could. They could do 60 to life,... [LB44]

SPEAKER ADAMS: Life without parole? [LB44]

SENATOR ASHFORD: ...50 to life. There are a whole variety, and I can't say that they wouldn't change it. Clearly, the Supreme Court is suggesting that if we do nothing with this bill at all, it is very...these 17 cases are going to be reviewed anyway and it is...and it's very possible that some, not all, but a few could get a different sentence and we would have no say in that because we would have not passed a bill. [LB44]

SPEAKER ADAMS: All right. [LB44]

SENATOR ASHFORD: So at least now we're creating a floor and a maximum. [LB44]

SPEAKER ADAMS: I have one other question, if you'll tolerate me. [LB44]

SENATOR CARLSON: One minute. [LB44]

SPEAKER ADAMS: The mitigating circumstances that are in this bill,... [LB44]

SENATOR ASHFORD: Yeah. [LB44]

SPEAKER ADAMS: ...they're here because the Supreme Court decision in effect said they need to be here, correct? [LB44]

SENATOR ASHFORD: Correct. A judge...we want the judge to consider these mitigating factors. They can consider others, but we want them to consider those mitigating factors in making the decision, and we want the Parole Board, when it makes its decision, to do the same. So that's what we're asking the courts to do here. [LB44]

SPEAKER ADAMS: Thank you, Senator Ashford. Thank you, Mr. President. [LB44]

SENATOR CARLSON: Thank you, Senator Adams and Senator Ashford. Senator Price, you're recognized. [LB44]

SENATOR PRICE: Thank you, Mr. President, members of the body. So we're brought to a weighty topic, and I don't know about you but I know my in-box and my phone has been ringing and constituents have been calling me and asking me where I am on this. I'll say, first and foremost, I agree with what the determination of the Supreme Court is. Lucky enough, it doesn't matter whether I agree or not. We've been told we'll be compelled, and I'm okay with that. I'm listening to the debate where we talk about judicial and prosecutorial discretion. I hear that there's a lot of trust in some areas, maybe not so much trust in others, because a judge has discretion, as does the prosecutor. I am weighing in my mind the concept that deals with what happens at 19 that's magical in the courts. Dr. Shonkoff, as many of you may know, has done a lot of pioneering research that deals with the development of the brain. Some would say that would be 26 or 27 in young men, that there's a physiological difference between young men and young women. But we have the age of majority as 19. I don't know yet what's the youngest person we've ever convicted of this crime. And knowing that...or a crime that would warrant this charge and this punishment. But knowing that 19 isn't really the age when the brain is done developing, so I'm wrestling with how we're coming about and doing things here on these time frames. And I have a question for Senator Ashford, if he would yield. [LB44]

SENATOR CARLSON: Senator Ashford, would you yield? [LB44]

SENATOR ASHFORD: Yes. [LB44]

SENATOR PRICE: Thank you, Senator Ashford. Section 3 where it prescribes that when a hearing would be set for parole, it says: every year thereafter. Is that a normal practice? I just saw it in there. [LB44]

SENATOR ASHFORD: Yeah, that's the normal practice now. [LB44]

SENATOR PRICE: Okay. Thank you. That's all I have for that. I'll be listening to the debate and, with that, I'd yield the balance of my time to Senator Coash. [LB44]

SENATOR CARLSON: Thank you, Senator Price. Senator Coash, 2 minutes and 40 seconds. [LB44]

SENATOR COASH: Thank you, Mr. President. Colleagues, I'm going to ask the Chair to divide the question on AM874, and I'm going to take the time we have until we break for lunch to explain why. There are some things in the committee amendment that are obviously changed by Senator Lautenbaugh's amendment and there are two substantive issues contemplated in AM874. One is the change in the minimum years. The committee AM151 shot out 30. Senator Lautenbaugh is trying to change that to 60. The other change contemplated in AM874 is the removal of those mitigating factors. Those are both very important things that the Supreme Court has said every state must

look at. They deserve attention on their own merits, and they deserve a vote on their own merits by this body. And so for that reason, I will ask for a division of the question. Thank you, Mr. President. [LB44]

SENATOR CARLSON: Thank you, Senator Coash. I would ask Senator Ashford, Senator Coash, and Senator McCoy, acting for Senator Lautenbaugh, to please come to the Chair. Senator Ashford. Members, in the view of the Chair, the question is divisible. The Clerk will work on that over the noonhour and we'll pick it up this afternoon. Mr. Clerk for an announcement. [LB44]

CLERK: Mr. President, I have a new resolution: Senator Krist, LR143 is an interim study that will be referred to the Executive Board. I have a conflict of interest statement from Senator Wightman that will be on file in the Clerk's Office. And Senator Campbell would move to recess the body until 1:30 p.m. [LR143]

SENATOR CARLSON: Members, you've heard the motion. All in favor say aye. Opposed, nay. We are recessed till 1:30 p.m.

RECESS

SENATOR McGILL PRESIDING

SENATOR McGILL: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: I have a quorum present, Madam President.

SENATOR McGILL: Thank you. Mr. Clerk, do you have anything for the record?

CLERK: I do. Enrollment and Review reports LB153, LB153A, LB429, LB530, and LB530A as correctly engrossed. That's all that I have, Madam President. (Legislative Journal page 938.) [LB153 LB153A LB429 LB530 LB530A]

SENATOR McGILL: Thank you, Mr. Clerk. We will proceed back to debate on LB44. Mr. Clerk, you have an update on the division of the question. [LB44]

CLERK: I do. Thank you, Madam President. The Chair ordered the division, as per Senator Coash's request. There are two components, two components, FA53 and FA54. FA53 deals with the term, the number of years; FA54 deals with mitigating factors. And, Senator McCoy, I believe you indicated that you wanted to take up the mitigating factors component first. [LB44]

SENATOR McCOY: That's correct. [LB44]

CLERK: Madam President, that is FA54. It's being offered as an amendment to the committee amendments. (Legislative Journal page 936.) [LB44]

SENATOR McGILL: Thank you, Mr. Clerk. Senator McCoy, you are recognized to open on FA54. [LB44]

SENATOR McCOY: Thank you, Madam President and members. Welcome back to the afternoon. In the absence of Senator Lautenbaugh, who could not be with us this afternoon, I do rise to introduce the divided amendment which was AM874 but now this particular section of it is FA54, as been described by the Clerk. It's my understanding that...and I'll probably ask a few questions at some point here this afternoon, but it's my understanding that the genesis, and I would love to have someone correct this if this is incorrect, it's my understanding that the genesis of the language found in lines 12 through 23 of AM151 and lines 1 through 9 of page 2 of AM151 is from the Supreme Court case decision, Miller v. Alabama, particularly, unless someone can direct me to some other part of the decision, would be from page 15. Now as many of you know or most of you know, probably all of you know I am not an attorney, but it's my understanding that this is what would be described as the dicta part of the Supreme Court decision and not part of the holding. It's my understanding that the only true holding, the finding, in the Supreme Court case, is that the mandatory life sentence without possibility of parole is the only aspect that was a finding of the Supreme Court. As such, the sections of language that would be stricken with FA54 and later on, when we get to it, FA53, would be the areas that it's my understanding prosecutors and, in turn, judges look at already in sentencing, these mitigating factors. Whether it's a child psychologist that's brought in, all of these are already looked at. So by putting this in statute, I'm not sure what situation we create. That was Senator Lautenbaugh's concern; I share that concern. And I would welcome debate this afternoon on why this language ought to be put into statute when judges already do this, and I would welcome that discussion this afternoon. Thank you, Madam President. [LB44]

SENATOR McGILL: Thank you, Senator McCoy. Senator Ashford, you are recognized. [LB44]

SENATOR ASHFORD: Well, very briefly, the dicta, or the reasoning probably is a better way to describe page 15, is the reasoning used by the majority of the Supreme Court in the Miller case, and it's the factors, that are enumerated on page 15 of the Opinion, are the factors that were critical to the Supreme Court's final decision or holding which, as we discussed earlier today, deals with the issue of mandatory life imprisonment without parole. In that decision, as we discussed earlier, the Supreme Court clearly and unequivocally has indicated that, though there are cases where life imprisonment without parole would be an appropriate sentence for a juvenile, the court, any court that

deals with a capital offense or a 1A felony in those states that don't have capital punishment, would...reasonable factors that they would look at. And those factors are on page 15. And just for the record, I think what I will do is read them. But again, what we're trying to do is find consistency here. We're trying to make certain that all of the...and the issue of whether or not a prosecutor or a judge may or may not consider those factors in a given case is sort of important to the discussion but not really to whether or not we include them in the statute, because what we want is we assume or I assume that most prosecutors and the prosecutors I know will read Miller v. Alabama and will look at the factors, as would most judges and would most defense attorneys. But what...the reasoning is impeccable, in my view, and it reads, "To recap: Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features--among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him--and from which he cannot usually extricate himself--no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth--for example, his inability to deal with police officers or prosecutors. 'The features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings.' And finally, this mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it." The factors in AM151 are the factors that are taken directly from the reasoning in Miller. There's no reason for us as a Legislature not to include those factors. I can't imagine more...we can add to them. We could sit back for a couple days and think about other factors that would be appropriate for a statute like this. But the factors that Miller talks about are the factors that we talk about every time we take up a juvenile bill. Every time we take up juvenile justice reform in any way, we are dealing with juveniles. We are dealing with juveniles if they are truant from school. We are dealing with juveniles if they've committed a serious but not a capital offense like the ones we're talking about in this bill. But juveniles are different. We deal with the dysfunction that they have in their lives. We deal with how impressionable they are. We deal with the fact that many times their siblings may... [LB44]

SENATOR McGILL: One minute. [LB44]

SENATOR ASHFORD: ...may be incarcerated; that they don't have a normal two-parent family; that this dysfunction inculcates their life. So it is those criteria that we as policymakers have almost an...quite frankly, an obligation to state clearly and unequivocally to judges and prosecutors across the state so that when we make decisions and the decisions are rendered, those decisions are consistently made. And when the Supreme Court of our state has an opportunity to review those decisions, those criteria are available to the Supreme Court not only in the Miller case but also in

state statute. [LB44]

SENATOR McGILL: Thank you, Senator Ashford. (Visitors introduced.) Returning to debate, those in the queue: Senator Schumacher, McCoy, Chambers, Krist, Seiler, and Coash. Senator Schumacher, you are recognized. [LB44]

SENATOR SCHUMACHER: Thank you, Madam Chairperson, members of the body. This is an interesting debate and we've come up to one point here where we're going to look at the two different questions of Senator Lautenbaugh's amendment. The one that we're talking about now to strike the language which calls for a procedure at the hearing, at the sentencing hearing, and to try to determine what is fair for the particular defendant, I have to say that I think that everything in this particular language that's under consideration now is something you would see anyway if you had a competent defense attorney and competent prosecutor present to the district court as a matter of sentencing. There's particularly bothersome that there are things that are not included in here. In a normal sentencing for first-degree murder, you have a whole list of aggravating and mitigating circumstances that are presented to the court. This particular language does not call for the presentation of those mitigating or aggravating circumstances in the case of a juvenile. It seems to me that those things should be included or we should not include anything and leave it simply to judicial procedure in order to determine whether or not there are mitigating circumstances. I'm further bothered by the fact that this language calls for just looking at these matters as though they were mitigating circumstances, mitigating circumstances if they're coming from the defendant's side, but they may also be aggravating circumstances. And will the court be allowed to consider them as aggravating circumstances, for example, the convicted person's family and community environment? Suppose that his family was a Mafioso family and he was prone to acts of violence, or his community that he had adopted was a gangster or a mob-type community or even just a plain, old-gang membership community. Those would be aggravating circumstances because some of those situations when you're growing up burn deeply into your mind. I think that what we're doing here is beginning to meddle in normal procedure and anyone who would be active in this type of case would certainly have read the Supreme Court Opinion and know that this, in addition to the other aggravating and mitigating circumstances, was something that should be looked at. I took particular interest in the word "impetuosity," if I'm even pronouncing that right. And I looked it up in the dictionary because, quite frankly, I wasn't sure what it meant. And it wasn't in the Black's Law Dictionary but it did appear in the Webster Dictionary, and it was the quality of being impetuous, an impetuous action or impulse. Well, that didn't tell me much. Impetuous was marked by impulsive vehemence or movement or action, marked by force or violence of movement or action. Vehemence was defined as the quality or state of being vehement: intensity. Intensity is defined as the quality or state of being intense, specifically extreme degree of strength, force or feeling. So I have a great deal of difficulty in understanding exactly what a judge is to look for or a court is to look for when they're looking for that particular word in

quality. Would Senator Ashford yield to a question? [LB44]

SENATOR McGILL: Senator Ashford, will you yield? [LB44]

SENATOR ASHFORD: Yes. [LB44]

SENATOR SCHUMACHER: Senator Ashford, what behavioral things, what visible things is a court to look for when it looks for impetuosity? [LB44]

SENATOR ASHFORD: They look at their history and they look at the kind of...at the act itself and they look at their record... [LB44]

SENATOR McGILL: One minute. [LB44]

SENATOR ASHFORD: ...to find out whether they acted in a manner that would be impetuous. I think we can assume that most juveniles do have strains of impetuosity. And I think... [LB44]

SENATOR SCHUMACHER: And what is impetuous? [LB44]

SENATOR ASHFORD: Acting...I think we all generally know what impetuous is. [LB44]

SENATOR SCHUMACHER: Well, I'm asking you because... [LB44]

SENATOR ASHFORD: Well, I mean I don't think...without the commensurate thought put into an act, is that you act in a way that's emotional and not commensurate with other. I think any teacher could probably come up with a definition of...their own definition of impetuous. [LB44]

SENATOR SCHUMACHER: Well, I think we're writing the particular law, we should probably be telling the courts... [LB44]

SENATOR ASHFORD: Well,... [LB44]

SENATOR SCHUMACHER: ...what we need to as far as when we set the standards of this particular language. This entire section that we're moving to strike now is simply not needed. The initial draft of the bill got straight and to the point of what the Supreme Court required us to do, and that's set some parameters for flexibility... [LB44]

SENATOR McGILL: Time. [LB44]

SENATOR SCHUMACHER: ...by the Governor...by the judge. Thank you. [LB44]

SENATOR McGILL: Thank you, Senator Schumacher. Senator McCoy, you are recognized. [LB44]

SENATOR McCOY: Thank you, Madam President. I'd go back to what I was talking about earlier and I would direct, members, I would direct your attention to the area of statute which is 29-2523, which is aggravating and mitigating circumstances that we already have in statute. And I would merely say I would certainly be amenable, I think, on behalf of Senator Lautenbaugh...and again, he's not here so in lieu of that I'll offer up the argument now. I don't know why we wouldn't use those same mitigating circumstances, that have been in statute for some length of time, in place of these. As Senator Schumacher just described, we just don't have a definition for "impetuosity." If you look that up, there is no definition of that. I think that's problematic. I think, as Senator Chambers many times on this floor, just in the short time that I've had the opportunity to serve with him, has brought to us the importance of plain language in statute, clear language that can be interpreted clearly. And I just don't understand...I understand that the word "impetuosity" is from Miller v. Alabama Supreme Court decision, but there's no definition of it in AM151 or in the underlying green copy of the bill, LB44. In addition to that, I find it problematic that on lines 13 and 14 of page 1 of AM151 it reads, "the court shall consider mitigating factors." Why wouldn't we just say "the court shall consider factors"? Why would we say just "mitigating factors"? In addition to that, line 2 of page 2 and line 3, "The outcome of a comprehensive mental health evaluation of the convicted person," I don't believe, unless someone can bring to my attention, we don't have in statute a definition of what a "comprehensive mental health evaluation" is. So again, I'm not an attorney, but if I am defense counsel in such a situation, who's determination, who's opinion, who's finding do we go off of to determine what is a "comprehensive mental health evaluation"? I think, members, it's incumbent upon us with the seriousness of this discussion, the seriousness of this issue, I believe it's incumbent upon us to make certain sure that we have proper definitions for things we're putting in statute. If we don't have proper definitions for them, I think we ought to strike them, which is why FA54 is before us this afternoon. If we're going to have this in the statute, let's have a definition of it. Would Senator Ashford yield for a question, please? [LB44]

SENATOR McGILL: Senator Ashford, would you yield? [LB44]

SENATOR ASHFORD: Yep. Yes. [LB44]

SENATOR McCOY: Thank you, Senator, and I appreciate the hard work that I know that you and your staff and the members of Judiciary Committee have put into this, to this topic. And I guess I would direct some of these questions, that I maybe asked rhetorically a few moments ago, direct them to you specifically. Do you...how do we go about determining what a comprehensive health...mental health evaluation is if we don't have that definition in statute? [LB44]

SENATOR ASHFORD: I think the statutes are replete, Senator McCoy with those types of standards, and it's up to the court to order such an evaluation. And, you know, any words we use in statute are susceptible to... [LB44]

SENATOR McGILL: One minute. [LB44]

SENATOR ASHFORD: ...some sort of different analysis. But I think "comprehensive mental health evaluation" is used throughout the statutes. I don't know how else you say it. I think it's going to be clear to most judges or all judges what it means. And, you know, I don't know how you break it down and pare it down any more than that. [LB44]

SENATOR McCOY: But it's my understanding, Senator, that judges already will request this or defense counsel will. Isn't that correct? [LB44]

SENATOR ASHFORD: Then I understand that that's normal, that's a normal course. But then if it is, then why not put it into statute so that we can make absolutely...we're dealing with juveniles here. We're not dealing with adults. That's why we don't have the death penalty mitigating and aggravators in statute for juveniles, because they're not going to get the death penalty. That's why we have mitigators in here that are consistent with Miller. You know, they didn't pull these words out of the air in Miller; it was a majority of the Supreme Court. So I think that's why, that's the reasoning for it. [LB44]

SENATOR McGILL: Time. Thank you, Senator McCoy. (Visitors introduced.) Returning to debate, Senator Chambers, you are recognized. [LB44]

SENATOR CHAMBERS: Thank you, Madam President, members of the Legislature. I'd like to ask Senator Schumacher a question. [LB44]

SENATOR McGILL: Senator Schumacher, would you yield to a question? [LB44]

SENATOR SCHUMACHER: I will. [LB44]

SENATOR CHAMBERS: Senator Schumacher, if each one of these words were to be defined, would you then still be in favor of striking this entire portion, as Senator Lautenbaugh's amendment would do? [LB44]

SENATOR SCHUMACHER: That word needs to be defined and some of the other text on the top of page 2 needs to be worked on, Senator Chambers. [LB44]

SENATOR CHAMBERS: Thank you. Madam President, the reason I'm not asking Senator McCoy questions, it's not his bill. But he's been given questions, I think, to ask. And from whatever source the questions come, they should be a matter of record, and

those of us who favor the bill should respond directly to them. Senator Schumacher knows that "impetuosity" means reckless, impulsiveness, heedlessness toward risk taking, disregard of consequences. We know what the term means when we say a young person is impetuous. You could say that to be young is to be impetuous. So any of these words can be defined. And when Senator McCoy asked Senator Ashford about a comprehensive mental health evaluation, courts do that all the time. But if he would have read a bit further, on line 4 it says, "The evaluation shall include, but not be limited to, interviews with the convicted person's family in order to learn about the convicted person's prenatal history, developmental history, medical history, substance abuse treatment history, if any, social history, and psychological history." As Senator Ashford has pointed out and as the U.S. Supreme Court pointed out, we're not dealing with adults. Everything that has been raised by way of objecting to this bill primarily deals with what is in the statute for adults. We have two systems of dealing with people based on age: the juvenile justice system, the adult system. If a child is ordered to stand trial in court and be charged as an adult, then everything that applies to adults will be applied to that child. This language is designed to make it clear that we are creating here a system that applies specifically to children, and these are the elements that should be taken into consideration. It will not hurt anything, not the judge, not the prosecutor, to have guidance in the statute based on things the Supreme Court indicated ought to be considered. When aggravating circumstances and mitigating circumstances were first put in place, they were not mandated by the U.S. Supreme Court. Somebody drafted what was called a model death penalty sentencing bill, and the mitigators and aggravators, as they're called, were included in that bill. But other states put in additional aggravating circumstances, additional mitigating circumstances, because the court, the Supreme Court, had not mandated any of them. So for these people to get on the floor and, because they've had training in the law, suggest that what is called dicta or words that are not directly necessary to settle the case are unimportant, they don't give proper... [LB44]

SENATOR McGILL: One minute. [LB44]

SENATOR CHAMBERS: ...attention to their legal training. Senator Schumacher knows--he's a lawyer--that even dissenting Opinions subsequently became the actual law of the land because it was adopted by a majority of the judges. So wherever in an Opinion we see language that's like a road map, the court doesn't order you to enact a certain kind of bill. It gives direction and guidance. And to say that we're going to give guidance to the court in arriving at a decision is not anything which in my mind is hurtful. Thank you, Madam President. [LB44]

SENATOR McGILL: Thank you, Senator Chambers. Senator Krist, you are recognized. [LB44]

SENATOR KRIST: Thank you, Madam President. Good afternoon, colleagues, and

good afternoon, Nebraska. We've worked long and hard, at least in the time that I've been here, trying to sort through family and juvenile issues across the state, spent a lot of time in debate, a lot of money trying to right some wrongs that were done with a botched privatization effort, and on the process of crafting another bill that would take our juvenile justice pilot program statewide. And the reason we spend that much time on this issue is they are our future. They will be our future leaders, blue and white collar workers, and they will be in our penitentiaries. Think about that for a second, because that's why I'm doing what I'm doing in the area of juvenile justice, OJS. The sooner we get kids the right kind of treatment, evidence-based treatment, the better possibility we have not to include them into our population in our penitentiary. Kids need to be treated like kids. And I'm reminded every time I say that that I shouldn't be talking about a baby billy goat. Children should be treated like children; juveniles should be treated as juveniles. I can't support the question in any division. I do support LB44 and AM151. I think that we are going down the right track. I am open to listen to the discussion that's going on. But at any time should we deviate from treating a child and giving them the consideration due, I think we need to look in the mirror and ask ourself if we're doing the right thing. With that, I would yield the rest of my time to Senator Ashford, if he would wish it. [LB44]

SENATOR McGILL: Senator Ashford, 2 minutes and 45 seconds. [LB44]

SENATOR ASHFORD: Thank you. And I will this time mean it, try to be brief. I think that the difference between the death penalty case statute that we're talking about and this one is this. In crafting this bill and specifically AM151 we are looking to what has been clearly stated to be not only the holding but the reasoning behind the holding and why juveniles in this country, who are in a situation where they've committed a very serious crime, how these juveniles are to be treated. And the criteria or those factors that the court looked at are clearly stated in the Miller case. For us to adopt those criteria or those standards is not remotely unusual. It is not taking away prosecutorial discretion nor is it taking away the judges discretion in entering the sentence. What the court in Miller was focused on was that when you're dealing with a class of people who are younger than 18 years old and older than some age, and 12, 13, 14, 15...you don't hear of 1A felonies committed by young people, juveniles younger than 12 normally but sometimes I guess it happens. So as you look at that progression of age, what the Supreme Court talked about was there's a difference between a 17-year-old and a 14-year-old. And I think that Senator Price brought this up this morning. I thought he did... [LB44]

SENATOR McGILL: One minute. [LB44]

SENATOR ASHFORD: ...did it very well. There's a difference between a 14-year-old and a 13-year-old and a 12-year-old and a 17-year-old, and those differences are different in every case, so you can't really delineate 100 factors. But the factors that the

Supreme Court came upon I think are reflective of common sense and the science in brain development, which is clear now. So in the end of this, I think we are...we have arrived at the right language. We could have left it out altogether; I don't see a reason to do that. It enhances the bill to put...to enumerate the factors, and therefore, I would continue to suggest that we keep them in. Thank you. [LB44]

SENATOR McGILL: Thank you, Senator Krist and Ashford. Senator Seiler, you're recognized. [LB44]

SENATOR SEILER: Madam President, members of the Unicameral, what I'd like to do is take you into the courtroom and give you a bird's-eye view of what actually goes on there. First of all, with regard to the fact situation, that is explained. If you plead your client guilty, the county attorney has to prove a reasonable...beyond a reasonable doubt by his testimony and the testimony of statements that he presents as to why your client is guilty, and then your client says yes, and you go through the normal procedures of saying nobody forced me to do this and anything like that. What we're talking about here is aggravated circumstances versus mitigating circumstances. In a trial for a first-degree murder case, your aggravating factors, you're pushing toward the death penalty. That's not what's going on here. And besides that, I think people forgot to read line 16 which says, we've got a list here, but they're not limited to that. Judge, you're not limited to that; you can take into any consideration that you want. I would, when we get to it, I may not speak but I'll tell you now I'm in favor of the 30 years. Here's why. I want as much flexibility as possible for those district judges or juvenile judges or wherever the court sentencing is taking place. We pay those people big money to make the tough decisions and they earn it, so why should...we can give them the guidelines. We can set standards. But it's going to be them trying the case, looking at each fact situation. Now I'll give you a perfect example. Two teenagers riding down the street. One says...the passenger says, pull into this gas station, I want to get a pop. He walks in, comes running out, jumps in the car and said, I just shot the clerk. You now got them before the court. Both have been found of felony murder. Both are before you, and now it's time for sentencing. Are you going to give both those the same sentence, the kid driving the car, who had no idea that it was going to go down, but he drove the criminal away, so he's part of the felony murder charge? We want to give that discretion to the judge to look at the boy driving the car and say, yes, you get this many years and, yes, you pulled the trigger and killed that person straight outright, you're going to get so many years. That's why we want to build the flexibility into this law. I think that's the way I want you to take a look at it, because it is very serious that we give the court the flexibility. Same thing is true when they're looking at the mitigating circumstances. Give them the flexibility to look at all the facts on both sides of the criminal case and reach a good decision. Thank you very much, Madam. [LB44]

SENATOR McGILL: Thank you, Senator Seiler. We have the following folks in the queue: Senator Nelson, Schumacher, McCoy, Lathrop, Chambers, and Schilz. Senator

Nelson, you are recognized. [LB44]

SENATOR NELSON: Thank you, Mr. President...Madam President and colleagues, members of the Legislature. I just would like to talk briefly here about FA54 here to AM51. Taking a look at page 15 of the Supreme Court Opinion, they set forth some guidelines. I might take issue as to whether this is dictum or reasoning. I don't see anything mandatory about the language because Senator Ashford has already read through that. Talks about maturity, impetuosity, failure to appreciate risks. What does that mean? Where are we here in this statute that talks...I mean in the proposed language that talks to anything about the knowledge of right or wrong? Are we talking about the risk that we're taking and the consequences? Is that what we have to deal with? If we're going to look at that, then we ought to determine or at least investigate as to what the person knew about the morality of the situation and what was right or wrong. A little later on we're probably going to be talking about some of the horrific things that juveniles have done in Omaha over the past years that have resulted in death, murder, people that have died and are not going come back. I would direct a question to Senator Ashford if he would yield. [LB44]

SENATOR McGILL: Senator Ashford, would you yield? [LB44]

SENATOR ASHFORD: Yes. [LB44]

SENATOR NELSON: Thank you, Senator Ashford. We're talking about the language here that Senator Lautenbaugh would strike, and I can see where the committee has come up with some of the things that they have as far as age and impetuosity. But the very last one, the one that says the outcome of a comprehensive mental health evaluation where they are to go into a person's family and the prenatal history, the developmental history, the medical history, the substance abuse treatment history, and social history. Where was that taken from? [LB44]

SENATOR ASHFORD: Where is what taken? Those words? [LB44]

SENATOR NELSON: Where...where was that language? Certainly it's not in the Supreme Court's Opinion. [LB44]

SENATOR ASHFORD: No, but those...they aren't, but the committee in its wisdom, Senator Nelson, came up with those words. I think what we are trying to suggest to the body is this, all of those factors need to be analyzed somehow and what we have failed miserably to do throughout the system is to do these sorts of mental illness analysis of juveniles. So when they get to this point where they have committed these acts, it is consistent that we do it and I...and that we do that analysis. I see no other...we're dealing with juveniles here. We're not dealing with adults. And the factors that go into the decision making of juveniles are different than adults. And that's...we wanted a

scientific measure, Senator Nelson. We wanted some objectivity, and that's why a comprehensive mental health analysis we felt and I do feel and I absolutely feel is critical to evaluating that juvenile in making a determination as to whether or not they can be rehabilitated because that's...it's about rehabilitation. They're juveniles. That's why we are treating them differently. There's an opportunity for rehabilitation in mental illness, and a baseline is important in that analysis I believe. [LB44]

SENATOR NELSON: Thank you, Senator Ashford. Again, I come back, we aren't talking about petty crimes here or robberies. We're talking about murder whether it was premeditated or whether it was done impetuously I guess is the word, and those are all factors. You know, we can talk here, and I understand there are a lot of mitigating factors and they should be considered. But I'm just a little dubious about listing all of these in the statute when in all other cases the judge is going to do that anyway or certainly there's going to be a defense and they're going to ask for these evaluations... [LB44]

SENATOR McGILL: One minute. [LB44]

SENATOR NELSON: ...and things of this sort. Thank you, Madam President. We're talking about capital crimes here and whether it's a 13-year-old or a 15- or a 16-year-old, the result is still the same. Someone is dead. A family is devastated. Does that mean then that if we can find any of these mitigating factors that we're going to be limited to 15 years in prison after a minimum sentence of 30 or less? That's what we're really doing. We put all these things in, what else is a court really going to be able to do? So in a way we're dictating there with putting all of these words in here as to what the outcome is going to be. Yes, I suppose the judge can go higher. And, as Senator Seiler said, they will make the call. But on the other hand... [LB44]

SENATOR McGILL: Time. [LB44]

SENATOR NELSON: Thank you. [LB44]

SENATOR McGILL: Thank you, Senator Nelson. Senator Schumacher, you are recognized. [LB44]

SENATOR SCHUMACHER: Thank you, Madam President and members of the body. Senator Ashford yield to some questions? [LB44]

SENATOR McGILL: Senator Ashford, would you yield? [LB44]

SENATOR ASHFORD: Yep. [LB44]

SENATOR SCHUMACHER: Thank you, Senator Ashford. Senator Ashford, the

committee chose to make up its own language at the top of page 2 where it calls for the outcome of a comprehensive mental health examination of the convicted person conducted by an adolescent mental health professional licensed in this state. What is the difference between a adolescent mental health professional and a mental health professional? Do we have two categories of licenses? [LB44]

SENATOR ASHFORD: We have...I'm not sure that there are categories of licenses, but there are categories of expertise. And in Nebraska unfortunately we have a lack of juvenile mental health professionals, and that's one of the problems that we have to deal with going forward. But I don't think they're...no, they're psychiatrists. They have a background in these matters, but they specialize in juvenile mental health issues. [LB44]

SENATOR SCHUMACHER: But this language does not call for a psychiatrist specializing... [LB44]

SENATOR ASHFORD: I understand that. [LB44]

SENATOR SCHUMACHER: It's very nebulous and it says a comprehensive mental health evaluation by an adolescent mental health professional licensed in this state. [LB44]

SENATOR ASHFORD: That's correct. [LB44]

SENATOR SCHUMACHER: And if we just mean a psychiatrist or a psychologist licensed in this state... [LB44]

SENATOR ASHFORD: That's correct. [LB44]

SENATOR SCHUMACHER: ...why don't we say that? [LB44]

SENATOR ASHFORD: We could clean...if you want to say that, I'm fine with that, Senator Schumacher. I think that...fine. If you want to change it to that, that's good. [LB44]

SENATOR SCHUMACHER: Okay. Now let's go on. It calls for this study to look into...talk to family members in order to determine the prenatal history. About the only person that would know prenatal history would either be the mother's doctor or the mother. Wouldn't that be the case? [LB44]

SENATOR ASHFORD: That's correct. [LB44]

SENATOR SCHUMACHER: What if both were unavailable? [LB44]

SENATOR ASHFORD: Well, they're still...they're going to consider what they can consider. I don't think...if they're unavailable, they're unavailable. I don't...but... [LB44]

SENATOR SCHUMACHER: But the language doesn't say if available; it says they shall consider these things. They use the word (inaudible). [LB44]

SENATOR ASHFORD: They say they shall consider it and if...what that would mean is if they're not available then they can't consider it. By consider, that means inquire. To me, it means inquire of those backgrounds and inquire of those circumstances. And if they're unavailable, then they've considered them but they can't glean anything from them. [LB44]

SENATOR SCHUMACHER: The specific language says shall include. Now if we just want them to consider things and to inquire of them, then this language should say what we mean. As we've heard over and over in some long lectures on this floor, these words particularly have meanings. [LB44]

SENATOR ASHFORD: Well, you can look at medical records. I mean, I suppose the parents or the parent would have medical records. I...you know, you look at the...you look at...Senator Schumacher, I really...what we're trying to do is create a list of those factors that should be looked at. It is possible under this amendment to look at other factors and it is...and there's nothing that precludes the court from looking at other factors that would necessitate looking at other Opinions or other things. But we are asking the judges to at least consider those things mentioned by the Supreme Court in Miller v. Alabama. [LB44]

SENATOR SCHUMACHER: Thank you, Senator Ashford. The Supreme Court in that case says that you want to look at immaturity, irresponsibility, impetuousness, and recklessness, yet the committee only chose to name one of those particular criteria in this language in the bill. Impetuousness, that's something that we have a hard time even understanding what it means. Why not recklessness, irresponsibility, immaturity as well? Why just pick out one? [LB44]

SENATOR ASHFORD: I mean we...I think we can discuss that and...but I also think that the court has... [LB44]

SENATOR McGILL: One minute. [LB44]

SENATOR ASHFORD: Go ahead. [LB44]

SENATOR SCHUMACHER: Thank you, Senator Ashford, for that discussion. On a broad...there are simply technical problems with getting down and specifying this stuff which courts ordinarily do in the course of business in a high sentencing case anyway

and specifying them in a statute. Why wasn't reckless? Are they not supposed to consider recklessness? Why was impetuosity picked? These things add to confusion and add to future litigation rather than removing them from litigation. And why only look at the mitigating side of this? Why not look at the aggravating side of this particular equation as well? Later on I think we need to look at why are we magically making a differentiation between 17 years and 364 days and 18 years? Does the brain magically gel on the 18th birthday? And how all this makes sense in context to the Supreme Court's Opinion? [LB44]

SENATOR McGILL: Time. Thank you, Senator Schumacher. Senator McCoy, you are recognized. [LB44]

SENATOR McCOY: Thank you, Madam President. And would Senator Ashford yield please? [LB44]

SENATOR McGILL: Senator Ashford, will you yield? [LB44]

SENATOR ASHFORD: Yes. [LB44]

SENATOR McCOY: Thank you, Senator. And I'd like to continue if I could with the...along the same vein of conversation you were just having debate with Senator Schumacher. [LB44]

SENATOR ASHFORD: Discussion. [LB44]

SENATOR McCOY: Discussion. Thank you. Again, I find it troubling. I think what you find...the reason you find FA54 here is I don't know so much as it's...and, again, I appreciate the hard work, I know we all do, that you and your committee and your staff have went through on this particular issue. It's very, very important. But if we're going to list mitigating factors, it seems troubling to me that we are "definitionaly" lacking here on defining what you mean by this. In addition to that, I wanted to direct your attention if I could to page 1 of AM151. Can you...on line 14, could you help me understand why it says starting in line 13, the court shall consider mitigating factors. Why wouldn't that just say factors? Why would that be narrowed to just mitigating factors? [LB44]

SENATOR ASHFORD: We're talking about sentencing here. We're not talking about what the mens rea or intent was in the commission of the offense. We're talking about sentencing. And because the Supreme...and I think you have to start with page 13 in the Opinion in Miller and then talk...and then read through that to get the full gist of what they're saying. The Supreme Court is clearly stating that juveniles are different than adults. So when it comes time to sentencing a juvenile for a IA offense, for what is a capital offense for an adult, that it is necessary to look at these factors because they're such...there could be such a...and they are mitigating, they're explanatory, they try to

explain why this juvenile would take...make this...do this act. And they talk quite a bit about the difference between a 12-year-old, well, 13-year-old, 14-year-old, and a 17-year-old and that there is no way you can make a sort of over the top kind of a criteria that applies to all of them. You got to look at their...all their...these factors. Now we also I thought very carefully put in the bill that they can look at any other factor that they so desire. They have to note it in their Opinion but they can look at it. So I don't know what other words we're supposed to use, Senator McCoy. I really don't. I mean, we're using English words, words in the English language to try to set out those things which separate a juvenile from an adult. And we're asking the court to look at those things here because the Supreme Court has set them forth, not...we're not including every single one of them but we are giving to the court, the trial court, the ability to look at additional factors as well. That's what we're trying to accomplish by this amendment. [LB44]

SENATOR McCOY: Well, I appreciate that, Senator. But using the language of AM151, why wouldn't we just say factors if we're going to say it at all because... [LB44]

SENATOR ASHFORD: Because they're mitigating. They're mitigating factors. [LB44]

SENATOR McCOY: Well, that may be, Senator, but what if that comprehensive mental health exam finds some sort of an aggravating factor? So wouldn't it be more important to say factor not mitigating factor? [LB44]

SENATOR ASHFORD: They are...we consider a comprehensive...you know, I'm having a hard time getting my arms around this, Senator McCoy. If they order a comprehensive mental examination, the mental examination will come back and it'll have...and it will mention things, and some things will be pluses and minuses I assume. [LB44]

SENATOR McGILL: One minute. [LB44]

SENATOR ASHFORD: But what we're asking the court to do is look...the mitigating here is the fact that they're juveniles and not adults. We're making a clear statement of public policy that juveniles are not adults, and that's why we use the word mitigating. [LB44]

SENATOR McCOY: I appreciate that, Senator. But I go back to what I just said. And if you have a comprehensive mental health evaluation and exam, you aren't...are we or are we not on sentencing handcuffing a judge to only view that mental...the results of that mental health evaluation under the auspice of mitigating? [LB44]

SENATOR ASHFORD: I don't believe so. I don't believe... [LB44]

SENATOR McCOY: How are we not though? [LB44]

SENATOR ASHFORD: I don't believe we are. I said the judge may look at mitigating factors and shall order a comprehensive mental evaluation. If the mental evaluation says this person knew exactly what he or she was doing and that they had...they were of an age where they should have known better or whatever it says and they didn't have these mental health factors, the judge could very easily sentence that person to life imprisonment without parole. And that option is available to the judge... [LB44]

SENATOR McGILL: Time. [LB44]

SENATOR ASHFORD: ...under this amendment. [LB44]

SENATOR McGILL: Thank you, Senator McCoy, and that was your third time. Senator Lathrop, you are recognized. [LB44]

SENATOR LATHROP: Thank you, Madam President. Colleagues, good afternoon. I am in opposition to or I stand here to speak against FA54. I want to talk a little bit about the Supreme Court case and why we are here. First of all, we have to do something. Those jurisdictions that sentence juveniles like adults to life without the possibility of parole, that violates the Eighth Amendment to the Constitution. That was the decision, the ultimate big picture decision, of Miller v. Alabama. So we can't do nothing. We can. And if you want to weigh in on this and try to turn it into 60 years to life without the possibility of parole, you're probably not accomplishing what we are mandated to do. Right now on FA54 the question is about the mitigators, and there are questions from those who have not read the Opinion or don't understand what it means, and I'd like to give you my interpretation. First, you must understand that what this case says is you cannot treat a child, a juvenile, like an adult when it comes to sentencing them for the most serious and the most heinous of crimes--murder. Okay. So that's already baked into the cake. Standing up here and talking about terrible things juveniles do is beside the point. That's what they're being sentenced for. The question is what's the scheme have to look like to pass constitutional muster and to get past the problems that were evident in Miller v. Alabama? Understand the very fundamental point the court was making in Miller v. Alabama is this, that when you take away the discretion to treat a juvenile different than an adult, you take away the opportunity to sentence them in an individualized way. Why is that important? They go through a line of cases. They give you the history about how they got to their conclusion. But the conclusion is this, that it is unconstitutional to treat a juvenile the same as an adult when the only sentence you can hand out is, well, first of all death. That was in a different case. But this case deals with life without the possibility of parole. You can't do it. You can't do it. Why? Because there is an overriding mitigating circumstance--youth, being a juvenile--and it's all those things, being impetuous, being...having poor judgment. All this amendment...all this portion of the bill does that the amendment tries to strike is to detail what those mitigating circumstances are. Okay. Now if there's something that isn't in the case and it made its way into the bill

and you want to get rid of it, we can talk about that. All right. But those are important things to put in there. And, understand, this is a mitigation case. This is a case about mitigating circumstances. Right. We don't need to be afraid. We do not need to be afraid that district court judges are going to let murderers out of prison in 15 years. But what we do and what I think the point of this bill is, is for us to say we are being responsive to the Supreme Court decision in Miller v. Alabama and, district court judge, when you sentence a juvenile to a IA felony, murder, you have to take these things into account. Now if we amend this to the point where they're not taking that into account... [LB44]

SENATOR McGILL: One minute. [LB44]

SENATOR LATHROP: ...we're not being responsive to the decision. We're not being responsive to the decision. Putting mitigating circumstances in there does not preclude the court from looking at the circumstances of the murder. Is it cold blooded? Give them more time. Was there torture? Give them more time. You're not prohibited from giving them a life sentence. You just need to have these considerations in play. And so when we itemize them, all we're doing is saying we will itemize the characteristics of being a juvenile. Take them into account as Miller v. Alabama requires of you. This amendment is much to do about nothing. The idea that the courts will find something in a mitigating circumstance and then have to give a youth a small sentence that they'll serve a portion of and be out on the street is not going to happen. Judges still are going to exercise their judgment. They're still going to look at it. But I can tell you... [LB44]

SENATOR McGILL: Time. [LB44]

SENATOR LATHROP: Thank you. [LB44]

SENATOR McGILL: Thank you, Senator Lathrop. Senator Chambers, you are recognized. [LB44]

SENATOR CHAMBERS: Thank you. Madam President, since we are compiling a record, I'm going to read something directly from the court case. And when the terms Roper and Graham are mentioned, those are the names of two recent cases on which this court relied. To start with the first set of cases, Roper and Graham established that children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform, we explain, quote, they are less deserving of the most severe punishments, citation. Those cases relied on three significant gaps between juveniles and adults. First, children have a lack of maturity and an underdeveloped sense of responsibility leading to recklessness, impulsivity, and heedless risk taking. Second, children are more vulnerable to negative influences and outside pressures, including from their family and peers. They have limited control over their own environment and lack the ability to extricate themselves from horrific crime-producing settings. And, third, a child's character is not as well

formed as an adults, his traits are less fixed, and his actions less likely to be evidence of irreversible depravity. Then they said, in Roper, we cited studies showing that only a relatively small proportion of adolescents who engage in illegal activity develop entrenched patterns of problem behavior. Then they go on. We noted that developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, in parts of the brain involved in behavior control, we reasoned that those findings of transient rashness, proclivity for risk, and inability to assess consequences both lessened a child's moral culpability and enhanced the prospect that as the years go by and neurological development occurs, his deficiencies will be reformed. Then they mention something that is quite significant. Imposition of a state's most severe penalties on juvenile offenders cannot proceed as though they were not children. When you read this court decision, there are judges who understand this if people on this court...this floor don't understand or pretend they don't understand. Here is one of the aggravators in the death penalty law, and I offered a bill to do away with it because it's not clear. And this is from Section 29-2523(d). "The murder was especially heinous, atrocious, cruel, or manifested exceptional depravity by ordinary standards of morality and intelligence." Not one of those words is defined. Senator Schumacher knows that there are words in a sentencing process which are not defined and the court will use the ordinary meaning of a word if the Legislature fails to establish the meaning in statute, but if anybody had sense enough or interest enough to read the U.S. Supreme Court decision on which this is based, they'll find all of the elaboration, elucidation, and definitional information that they would possibly need. Then under mitigators it talks about, "The crime was committed while the offender was under the influence of extreme mental or emotional disturbance." What is that? That's already in the statute. Courts have been able to use that. [LB44]

SENATOR McGILL: One minute. [LB44]

SENATOR CHAMBERS: At the time of the crime, the capacity--what does that mean--of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was impaired as a result of mental illness, mental defect, or intoxication, and not one of them is defined. Senator Schumacher knows better. The rest of you all don't. So while we take time on this, I'm going to read it. But, remember, if you kill the bill, it doesn't hurt those of us who are in favor of doing something. Thank you, Madam President. [LB44]

SENATOR McGILL: Thank you, Senator Chambers. Senator Schilz, you are recognized. [LB44]

SENATOR SCHILZ: Thank you, Madam President, members of the body. Good afternoon. This isn't normally a bill that I would stand up on or mention anything on but here I am. So here goes. I've sat and listened intently. Senator Chambers talks about

where things are defined, where they're not defined. And I think that he's right. We run into issues where that happens. I mean, if what we're talking about here is just a fact of sitting down and getting comfortable with what words mean, we should probably work towards that direction. I know this. As I look at this, I understand the Supreme Court ruling. I understand we have to do something. But I think that it's important that we remember that when we're talking about this, yes, we're talking about juveniles, but on the other side of it we're talking about some pretty heavy duty crimes--capital crimes, murder in the first degree. And Senator Schumacher gave me his book here and I read it, and I'm telling you, folks, these aren't good people that I think that in 10, 15, 20 years should get this opportunity necessarily. But I'll sit and I'll listen and I won't...I'll try to make the best decision I can. And with that, I'd give the rest of my time to Senator McCoy. [LB44]

SENATOR McGILL: Senator McCoy, 3 minutes and 28 seconds. [LB44]

SENATOR McCOY: Thank you, Madam President. Thank you, Senator Schilz. Would Senator Ashford yield, please? [LB44]

SENATOR McGILL: Senator Ashford, would you yield? [LB44]

SENATOR ASHFORD: Yes. [LB44]

SENATOR McCOY: Thank you, Senator. I'd like to go through if I could more with Miller v. Alabama and which parts of the dicta language, the dicta argument made it into AM151. I'm having a hard time lining up the language from...all parts of the language. Are there just subsections of it that we're trying to fit into AM151? I'm trying to understand if we're...in talking about mitigating factors and, again, I don't necessarily agree, which is fine, with your explanation for what we're talking about here. But I'd like to find out, can you help me understand because I'm looking...as I look through, the language is not the same. Now I don't know if that's intentional just through drafting or is there a reason that the language as it's outlined in what I see as page 15 of Miller v. Alabama fitting into page 2 of AM151. They don't really line up. Can you help me walk through? Is there a reason for that that they don't line up? [LB44]

SENATOR ASHFORD: I don't know if we need to walk through it. I think you have to read the Opinion in its entirety. [LB44]

SENATOR McCOY: Well, I have, Senator. [LB44]

SENATOR ASHFORD: Well, not you. I mean, I think one has to read the Opinion in its entirety. And then the standard really is whether or not the language in the bill is consistent with the Opinion in Miller v. Alabama. And honestly I defy anyone to read the Opinion, the majority Opinion in Miller v. Alabama and not come up with the opinion that

the factors in this bill are consistent with the concerns raised by the Supreme Court in dealing with juveniles and adults in the same way when it comes to sentencing for capital crimes. And the...we...some of the words as we've discussed come from the Opinion, some of the words come from our reading of the Opinion, pages 13, 14, and 15. But, again, I think that we have some license in crafting a statute. We have some license in using words that are, as Senator Chambers rightly says... [LB44]

SENATOR McGILL: One minute. [LB44]

SENATOR ASHFORD: ...that if there's some confusion about the meaning, you look at the ordinary and customary meaning of a word. We used words that I believe are consistent, and they were carefully crafted, that are consistent with the language in the bill or in Miller. So whether they're the exact words or there could be other words, you know, there may be other words. But these I believe are consistent and are clearly constitutional. [LB44]

SENATOR McCOY: Thank you, Madam President. [LB44]

SENATOR McGILL: Thank you, Senator Schilz and Senator McCoy. Senator Avery, you are recognized. [LB44]

SENATOR AVERY: Thank you, Madam President. I don't often make moral arguments on the microphone, but I believe this is a moral issue. If you look at the data, the United States is the only country in the world that sentences juveniles to life in prison without the possibility of parole. That's disturbing to me. Not only should this be changed because the Supreme Court has required it, but it should be changed because it's the right thing to do. I have never agreed that the courts should treat juveniles the same as adults. And the reason for that, many people have mentioned in here already, some of the data on juvenile crime thinks it makes it very clear that we have a moral obligation to do something in this area and I think LB44 does it. But some of the data show that approximately 2,600 inmates nationwide are serving sentences of life without parole for crimes committed while they were juveniles. Many were convicted and sentenced but had no prior convictions. This was their first transgression. Also, it shows that juveniles are not merely little adults. They're not like adults. They...as we have heard in here before, they have poor impulse control. They're susceptible to peer pressure. They lack the ability to fully understand long-term consequences. They are less culpable for their actions and more capable of rehabilitation. Let me address the rehabilitation more fully. An inmate in Michigan was sentenced in 1980 for a slaying he committed at the age of 16. He was found to have an educational level of a third grader when he was sentenced. Think about that. Since then, he has attained his GED, he has earned certificates in skilled trades, and he has finished several college courses. He is a good candidate for parole but he is stuck in prison for life. What's important about LB44 and AM151 is that it constructs law for the state of Nebraska that recognizes that children

can change over time, that they are different, and they should not be treated as adults. Juveniles who commit crimes are still in the midst of their cognitive and psychological development, their brains are still developing. In fact, the frontal lobe of the brain which controls our most advanced functions continues to evolve well into our twenties, and that's for us as well as for these people we are talking about. These advanced functions that are referred to here involve the ability to judge consequences and the ability to control impulses. The difference between a juvenile and an adult is clear. A child's ability is unformed, meaning that his or her criminal character is far from being set in stone. So they have greater changeability, they have a strong capacity for change, and we should recognize that with this bill. I will support LB44 and I will support AM151. And I am not prepared to support FA54 because it removes a vital part of the committee amendment that I believe is essential to LB44. Furthermore, I will not support... [LB44]

SENATOR McGILL: One minute. [LB44]

SENATOR AVERY: ...any amendment along the way to move from 30 years as proposed to 60. These amendments that we are considering now, FA54 and FA53 that is soon to come, do great harm to a good and much needed bill. Thank you, Mr. President. [LB44]

SPEAKER ADAMS PRESIDING

SPEAKER ADAMS: Senator Hadley, you're recognized. [LB44]

SENATOR HADLEY: Mr. President, members of the body, I echo what Senator Schilz said. Rarely do I get up and talk on the mike on these type of bills. I'm not an attorney, don't know a great deal about the law. Would Senator Ashford yield to a question or two? [LB44]

SPEAKER ADAMS: Senator Ashford, would you yield? [LB44]

SENATOR ASHFORD: Yes. [LB44]

SENATOR HADLEY: Senator Ashford, are we basically looking at...basically two questions here, the 30 years or the 60 years would be one question and the second question is how much guidance do we want to give the judge in sentencing? [LB44]

SENATOR ASHFORD: Yes. [LB44]

SENATOR HADLEY: What is the proper role of the Legislature in giving guidance to judges in sentencing? Is that...I'm not a lawyer so I really have no idea, is this a common type of thing or is it something we normally do not do or could you just give me some help on the role of the Legislature in doing that? [LB44]

SENATOR ASHFORD: We do it quite a bit. And most recently we have given guidance, not only guidance but dictated to judges that when there's a law violation involving a firearm, most law violations have mandatory minimum sentences. So, in fact, we take the judges totally out of the ability to use their discretion in those sentences. But I think when we're dealing...these are IA capital offenses and an adult...with an adult, the punishment is death or one of the options is the death penalty. And we set forth very...well, we set forth mitigating and aggravating circumstances in the law that are designed to be consistent with constitutional mandates to us as a Legislature and as a state. But we clearly tell the judges this is what we want you to consider in determining whether the death penalty is an appropriate punishment. We do it, I think...and certainly in this case...you ask a great question, Senator Hadley, in this case when we're dealing with a IA felony, which is again capital murder, that we are very careful in how we, I think as a Legislature and should be, what we instruct the judges to do as they look at different aspects of the case, in this case the sentencing part. So, yes, we do do that. [LB44]

SENATOR HADLEY: Senator Ashford, not being a lawyer I'm probably asking dumb questions, but... [LB44]

SENATOR ASHFORD: No. [LB44]

SENATOR HADLEY: ...can the sentencing part of it be appealed? You know, if we list these mitigating circumstances and a judge decides that, no, I don't believe there are mitigating circumstances... [LB44]

SENATOR ASHFORD: Right. [LB44]

SENATOR HADLEY: ...can the sentencing be appealed? [LB44]

SENATOR ASHFORD: Yeah, absolutely. And the Supreme Court could send the case back down and say to the trial court and say you've...the sentence is too light, for example, you have not... [LB44]

SENATOR HADLEY: Too? [LB44]

SENATOR ASHFORD: Too light. Too lenient. [LB44]

SENATOR HADLEY: Too lenient. So... [LB44]

SENATOR ASHFORD: Or the Supreme Court could say the sentence is too harsh. It could do one or the other. But, yes, the Supreme Court can adjust or at least send back to the trial court an Opinion that says you must adjust the sentence. [LB44]

SENATOR HADLEY: Another question I have, and this goes to the 30- and 60-year minimum, has there been any studies? I assume that part of what we worry about is recidivism... [LB44]

SENATOR ASHFORD: Right. [LB44]

SENATOR HADLEY: ...that this person is going to go out and... [LB44]

SENATOR ASHFORD: Right. [LB44]

SENATOR HADLEY: ...maybe not commit the same crime but going to be involved in a life of crime. Have there been any studies that you know of whether a 30-year sentence versus a 60-year sentence as far as recidivism? [LB44]

SENATOR ASHFORD: The only studies I'm...and I've read many studies that say that when you're dealing with a juvenile who's committed a crime at a young age that the deterrent effect... [LB44]

SPEAKER ADAMS: One minute. [LB44]

SENATOR ASHFORD: ...of a longer sentence has very little if anything to do with the commission of the crime. Again, we have the parole system that would make the decision whether or not to release somebody, and our Parole Board does not release people that...where they feel there's a chance that there will be another, you know, another crime committed. [LB44]

SENATOR HADLEY: Thank you, Senator Ashford. You know, I find this very difficult because I understand the anguish of the victims and the families, yet on the other hand we've shown the studies of that these are juveniles. [LB44]

SENATOR ASHFORD: Right. [LB44]

SENATOR HADLEY: And we do have a Supreme Court case and it seems to me that we ought to be doing what we can to be sure that we don't put into statute a law that's going to get us involved in legal wrangling again because it doesn't meet what the Supreme Court of the land has said that the factors are that they wish us to look at. So from a nonlawyer, that's my 2 cents on the subject. Thank you, Mr. President. [LB44]

SPEAKER ADAMS Thank you, Senator Hadley. Senator Carlson, you're recognized. [LB44]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. In

listening to this I have come to the conclusion that really this is one of the more serious bills debated this session. And I consider myself tough on crime. Most of you probably know that recently there was a 17-year-old that approached a mother of a 15-month-old and demanded money. And she said, I don't have any, so he shot her 15-month-old in the head. Now in my view there is no penalty that's too harsh for that 17-year-old. Historically there also was a real trial about 2,000 years ago. And Pilate needed to make a decision on whether to release somebody or who to release. And he told the crowd and the crowd was the jury. Didn't have a jury there. He said I find no fault in this man. Should I release him? And the crowd said no. Release Barabbas. And then he said, well, what shall I do with this man? The crowd said crucify him. Now this debate, I think it has been but it should be a bipartisan debate. In no way should it be a D or an R debate. And it shouldn't be decided by any kind of mob mentality. It ought to be decided by thoughtful consideration and deliberation. And I would ask that those that are testifying to help us that are nonattorney members to really understand what is at stake here. And one of the things that I was very impressed with was what Senator Seiler said a while back and I would like to address him if he would yield. [LB44]

SPEAKER ADAMS: Senator Seiler, would you yield? [LB44]

SENATOR SEILER: I will. [LB44]

SENATOR CARLSON: Senator Seiler, you gave an example and I may not have it exactly right, but you said there were two young boys really in a car, and the passenger was a 17-year-old and I'm going to say the driver was a 14-year-old. And a 14-year-old shouldn't be driving, but 14-year-olds learn how to drive and very well could be the case. And the 17-year-old said I'm going inside and get a pop. And when he came back he said let's get out of here. I shot the attendant. Now I don't understand what a IA felony is. But in this example that you gave, could both of those boys be charged and convicted of a IA felony? [LB44]

SENATOR SEILER: Both of them would be. One would be charged with first-degree murder and the other would be charged with felony murder. [LB44]

SENATOR CARLSON: So both of them are IA felonies? [LB44]

SENATOR SEILER: Correct. [LB44]

SENATOR CARLSON: All right. And you asked a good question. Should they both receive the same sentence? Now if this bill passes and the amendments to it, could they both receive the same sentence? [LB44]

SENATOR SEILER: They could but I believe that if we put the mitigating circumstances in there and trust our judges that they would get different sentences. [LB44]

SENATOR CARLSON: In the case of your example, what does the bill and the amendment do to help in the process of prosecution and conviction? [LB44]

SENATOR SEILER: Well, I think AM151 sets up the mitigating circumstances and I think FA54 and FA53 I believe are doing away with those good points of the case and setting it at 30 years rather than 60 years. Granted if you served good time, you'd get out in 15. [LB44]

SPEAKER ADAMS: One minute. [LB44]

SENATOR SEILER: That will depend on the fact situation the court saw when it sentenced the boys. [LB44]

SENATOR CARLSON: All right. Thank you, Senator Seiler. I appreciate your participation there. And, members, again this is a serious matter. And those of us that aren't familiar with the law, we need earnest and sincere help in guiding us on how we're going to vote on this bill. Thank you, Mr. President. [LB44]

SPEAKER ADAMS: Thank you, Senator Carlson. Senator Karpisek, you're recognized. [LB44]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I'd like to yield my time to Senator McCoy. [LB44]

SPEAKER ADAMS: Senator McCoy, you are yielded 4 minutes and 45 seconds. [LB44]

SENATOR McCOY: Thank you, Mr. President. Thank you, Senator Karpisek. As I've talked about in previous times on the microphone, I don't think anyone here...contrary to maybe a few people that have talked on the microphone, I don't think anybody here is trying to make a case that we don't need to address this topic. I certainly haven't said that. I don't believe that I've heard anyone get on the microphone and advocate that. I think the Supreme Court, United States Supreme Court has made a pretty clear case that with Miller v. Alabama in addition to previous decisions in Graham v. Florida and Roper v. Graham (sic) that this issue has to be taken care of by the 50 states. And I think you're seeing across the country a move for that. But I do think and I go back to my underlying concerns with the language of AM151 and I just go back to a fundamental concern that if we're going to have things in place statutorily that I'm being told happens anyway in the practical world during sentencing, then why wouldn't we make certain sure that we're saying it in a way that leaves no question at all about what we're trying to do? And I would go back to the language in AM151, again in lines...starting in line 12 of page 1 where we say the court shall consider mitigating factors. Well, and as to Senator Ashford's point, if mitigating factors has to be in there

for whatever reason, let's accept that premise, then why wouldn't we say the court may consider mitigating factors? I just think we're opening ourselves up to potentially more litigation for one, which I'm not really sure is what we're trying to accomplish here. I'm not sure that takes care of the problem. I think we all recognize, I hope, that this is a problem and that a life sentence without possibility of parole has now been deemed to be unconstitutional with the Eighth Amendment. I don't believe anybody is making a case that that isn't correct. But if we're going to put into statute this language, let's make sure it's right. That isn't to say I don't stand here in support of FA54 saying the language or the removal of this language might be the exact way to solve this. I'm not making that case. What I am making the case for is let's make certain sure that the language that we have is correct. If removal of this language isn't correct, well, then let's make sure we find a solution that is. I go back to again what Senator Chambers has said many times whether it's something that would go in our state constitution or something that goes in statute. We don't want statute books that are ten-feet tall with all kinds of language in there that isn't helpful. Let's make certain sure that the language that we're using is appropriate, concise, and gets the point across in what we're trying to accomplish. I still don't understand and haven't gotten a good explanation for why we have some of these things in here without definitions. I believe in statute we usually try to find a definition... [LB44]

SPEAKER ADAMS: One minute. [LB44]

SENATOR McCOY: ...thank you, Mr. President, or we reference a definition some other place in statute. Again, unless I'm mistaken, there is no definition for the word impetuosity. I mean, we can look it up. The Miller v. Alabama decision doesn't define it. We can look up a dictionary definition and that may be the one we want to use. But we don't have a definition statutorily. So let's either put in a definition or let's find another word to use or let's remove it altogether. Thank you, Mr. President. [LB44]

SPEAKER ADAMS: Thank you, Senator McCoy. Senator Bloomfield, you're recognized. [LB44]

SENATOR BLOOMFIELD: Thank you, Mr. President. I'd yield my time to Senator Schumacher. [LB44]

SPEAKER ADAMS: Senator Schumacher, you are yielded 4 minutes and 55 seconds. [LB44]

SENATOR SCHUMACHER: Thank you, Mr. Speaker, members of the body. Again following up on what Senator McCoy has said, if we're going to go beyond what the original bill did, and that was simply give flexibility to the court so they don't have to sentence a minor to life with no options of doing anything less, and then we're going to go into a whole section which tries to, I'm told, incorporate the Supreme Court's

guidance into the statute in a very poor way. Again, the impetuosity, even though that word is kind of fun or kind of hard to say, oddly enough it appears in the bill. But repeatedly in the court's decision, the court says immaturity, recklessness, impetuosity. Another time, youth is a time of immaturity, irresponsibility, impetuousness and recklessness. Why are the other words? Why do we only put a quarter of just those words? Why are we not incorporating the guidance of the entire Supreme Court decision into our statutes? Either that or doing what is done all the time anyway and attorneys read the Supreme Court decisions and so does the judge and they know that's a standard to follow. Instead we put in very unclear, partially lifted language from the Supreme Court decision into this committee-drafted amendment. We don't...we say that mitigating factors, I want to look at the mitigating factor: the convicted person's intellectual capacity. Now what does that tell the judge? Is a really high IQ kid supposed to be treated more or less leniently than a kid who is not very bright at all? Which side does that go? We don't tell the court. We just say that intellectual capacity is mitigating. Well, if we're really going to go in and play judge here and we're going to try to incorporate the court's Opinion and the spirit of it into a statute, shouldn't we tell the judge whether that's a good or bad thing, whether or not a kid is overly bright or overly dull? We don't, we just put that in there without any guidance at all to the courts. What we're dealing with here, fundamentally, is somebody who has either pled guilty or been found guilty of doing this thing: killing another person purposely with deliberate and premeditated malice; or in the perpetration or attempt to perpetrate a sexual assault in the first degree, arson, robbery, kidnapping, hijacking of any public or private means of transportation, or burglary; so killing somebody while doing one of those things; or by the administering of poison or causing the same to be done; or willfully and corrupt by perjury or subordination of perjury he or she purposely procures the conviction and execution of an innocent person. We're not dealing with people who are angels to begin with. They've been convicted of that. Now they're before the court for sentencing. What the Supreme Court has simply said in a lot of pages is this, because they're still kids, and it is not right if you don't give the court some wiggle room other than just simply a life sentence without chance of parole. You got to give them something more. The court does not say what the something more is, whether it is 60 to life, 75 to life, or a 5 to life. It just says you need to have some wiggle room for the courts. Arbitrarily this particular bill says, well, 30 years, possibility of parole in 15, that's the range we're going to deal with. And that's where the judgment of the Legislature has got to come into play. Is 30, half that 15, good enough? Do we want to say to the judge... [LB44]

SPEAKER ADAMS: One minute. [LB44]

SENATOR SCHUMACHER: ...this is a serious enough thing that you don't go below 60, half of which is 30; or 50, half of which is 25. And the more...the lower we set the bar of the minimum, the quicker these other provisions start to kick in with reference to how important it is to look at mitigating circumstances and a parole hearing every year. Beyond...once we get beyond this floor amendment, there will be deeper philosophical

issues that rise between when we cut off one standard and start employing another. Thank you, Mr. President. [LB44]

SPEAKER ADAMS: Thank you, Senator Schumacher. Senator Chambers, and this is your third time, Senator. [LB44]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, that Miller v. Alabama is found at 567 U.S., and then they don't give a page number, but I'm going to give you the page number where this quote comes from. One sentence, page 8: Our decisions rested not only on common sense on what any parent knows, but on science and social science as well. Then the court cites specific studies that have been undertaken. This is a sentencing proceeding, not the trial. When a trial is occurring and it's criminal, every element of the offense must be proved beyond a reasonable doubt, every element. Any doubt goes to the defendant, because where there is doubt then you haven't met your burden of proof. When it comes to sentencing, there is never the specificity that you find when you're setting forth the elements of a crime. The conviction has occurred. The U.S. Supreme Court has stated that you cannot sentence juveniles according to the same standards that you use in judging the same conduct committed by an adult, that the process cannot deal with juveniles as though they're not children when you're sentencing. So you can talk about all these heinous, "hainous" (phonetic), whichever way you want to pronounce it, crimes committed by juveniles. It doesn't matter. The court is talking about sentencing. And if you establish that you are utilizing the standards to sentence these children that are used in sentencing adults, then it cannot stand. Senator McCoy continues to say he doesn't understand why the word "mitigating" is there; because that is the process being dealt with. He's not a lawyer, but he understands English. He's trying to hold it off until Senator Lautenbaugh I guess comes back, so he keeps saying the same thing over and over. He doesn't understand. Well, if he's telling the truth we know that. And it cannot be explained any clearer so he will never understand. When it comes to what kind of evidence must be presented by the prosecutor to the defense, the word used is "exculpatory," tending towards innocence. Why do the requirements say that any exculpatory evidence in the hands of the prosecution must be turned over to the defense? It doesn't say evidence tending toward guilt because the prosecutor is going to do that. But the purpose is to meet what the law intends to be carried out. And proportionality is what we're looking at here. Is there a mismatch between the offense and the sentence being imposed? And the Supreme Court said you must have that proportionality or fit the sentence to the offense. And when it comes to juveniles, you cannot use the standard applied to adults. But this is what I'll say, and I might run out of time before I get it said: don't pass the bill. Wait until Senator Lautenbaugh comes back. Talk it to death and we stay right where we are now. Every one of those 24, or however many cases, will be taken up on appeal. And the Nebraska Supreme Court said they must go through the regular process. The Pardons Board cannot change those sentences in the way they wanted to do. Every one of those life-without-parole sentences will be vacated, will be set aside, will be

nullified, will be erased. [LB44]

SPEAKER ADAMS: One minute, Senator. [LB44]

SENATOR CHAMBERS: Those people's conviction will not even be before the court, only the sentence. The sentence has been ruled unconstitutional. Kill the bill and that's where it still stands. Then as each one of these cases goes up, then each one must be handled separately by the court because it has said you must individualize the sentence to fit each individual's characteristics and the circumstances of the offense, so you cannot give one determination in one of the 24 cases and it applies to all. That's what the U.S. Supreme Court said cannot happen. You want litigation; kill the bill. You want expense; kill the bill. The defendants who are sentenced right now are facing life without possibility of parole. It can't be made worse for them. But you can make it worse for society if you're interested in cutting down litigation, unclogging the courts, and coming to some kind of resolution that comports with what the U.S. Supreme Court says. [LB44]

SPEAKER ADAMS: Time, Senator. [LB44]

SENATOR CHAMBERS: Thank you, Mr. President. [LB44]

SPEAKER ADAMS: Senator Pirsch, you are recognized. [LB44]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I'd like to ask Senator Ashford just a couple of questions if he'd yield. [LB44]

SPEAKER ADAMS: Senator Ashford, would you yield? [LB44]

SENATOR ASHFORD: Um-hum. [LB44]

SPEAKER PIRSCH: Thank you. Just for point of clarification, I was trying to get a number with respect to the number of individuals who are involved in this. In other words, youth who have currently been sentenced to life in jail without possibility of parole. [LB44]

SENATOR ASHFORD: 17. [LB44]

SENATOR PIRSCH: Okay. 17. And do you know of this 17 how many of these youth were...had facts that would constitute felony murder? [LB44]

SPEAKER ASHFORD: No. [LB44]

SENATOR PIRSCH: Okay. I guess I wanted to address issues that were maybe beside the point of this particular amendment with respect to the specific holding...oh, thank

you, so I've heard, and, Senator Ashford, I'll ask you another question so you can...if you would yield. [LB44]

SPEAKER ASHFORD: Yes. [LB44]

SENATOR PIRSCH: So 27, does that seem to be the number? [LB44]

SENATOR ASHFORD: The number is 27. I stand corrected. [LB44]

SENATOR PIRSCH: Okay. And with respect to and if you can help clarify the specific holding of the Supreme Court in Miller v. Alabama, and I'm trying to have an understanding, I think this was touched upon before, so you have a holding and then you have rationale surrounding the holding. Did the court indicate other than the sentence cannot be life in prison without possibility of parole, past that as a matter of constitutionality not of policy, legislative policy, is it up the Legislature past that point can't be life with... [LB44]

SENATOR ASHFORD: Yes. Well, I think that question is yet to be resolved. And that's why I would...we don't know that. Sixty to life, will that...would that pass the...if that case went up to the Supreme Court, what would the decision be? I do not know. What we do believe is that 30 to life where the judge can sentence a defendant to life without parole, that 30 to life is consistent with what other states have been adopting or looking at and that it would pass constitutional muster because it would be enough of a choice that the court would accept that. Sixty to life, I think it's still...and I don't know, I'm not the Supreme Court but it's...I think it's problematic. [LB44]

SENATOR PIRSCH: So and just to get a general survey of other states then, how many other states I think you had said generally had adopted somewhere in that range? [LB44]

SENATOR ASHFORD: I think Wyoming. There aren't too many that have adopted anything, Senator Pirsch. I think they're all...Virginia has...your state has adopted...at least they're in the process of adopting 20 or 25 to life. I think Wyoming is 25 to life. The problem is, is that each one of the states has a different sentencing regime so it's hard to compare because we have...we gain one year for one year of good time. So other states have different sentencing regimens. But I know all the...not all, most states are dealing with it legislatively in some way. And I don't...I mean, there may be somebody that's doing 60 to life legislatively but I'm not aware of any. I'm not aware of any. They're mostly... [LB44]

SPEAKER ADAMS: One minute. [LB44]

SENATOR PIRSCH: Thank you. Well, and I guess that's what I'd be interested in

knowing. This decision as I understand was just decided June 25 of 20...oh, okay. [LB44]

SENATOR ASHFORD: I do have some. California...well, North Carolina is 25 to life; Pennsylvania is 35 to life, and then 25 to life at 14 years old; Wyoming is 25 to life. These have already been passed. Utah, I think it looks like 25. South Dakota creates a sentencing scheme that allows for any determinant number of years with a maximum of life. So those are the...there are one, two, three, four, five, six...they all seem to be in the 20-25-30 range and that seems to be the trend. But again to your point, each state has a different sentencing regimen. [LB44]

SENATOR PIRSCH: Yeah. What... [LB44]

SPEAKER ADAMS: Time, Senators. [LB44]

SENATOR PIRSCH: Thank you. [LB44]

SPEAKER ADAMS: Senator Nelson, you're recognized. [LB44]

SENATOR NELSON: Thank you, Mr. President and members of the body. I want to come back and just clarify where I stand because there was some concern. I am in support of FA54, the amendment that Senator Lautenbaugh has to AM151. Senator Lathrop was quite right. We have to do something, but what is it we have to do? All we have to do by this statute is what's on the green copy. We have to give the courts some discretion in Class IA felonies and, therefore, in the bill we give them discretion by giving a range, a minimum, and that's what we are eventually going to have to get to. What will be the minimum? Will it be a mandatory minimum of a number of years? Will it be a minimum? That's what will be coming too. I want to read into the record again from page 15 of the Miller v. Alabama. To recap: Mandatory life without parole for a juvenile precludes consideration. In other words, it precludes consideration. You can't even take it into consideration of age, hallmark features, failures, home environments, all that sort of thing. These are guidelines that the court has set. Reasoning. And just as Senator Schumacher said, they're there for the courts to take a look at and they will at all levels if they're dealing with this type of felony. They're there for defense counsel to use saying these are the things that need to be taken into consideration when we're talking about sentencing of juveniles who have been convicted of a Class IA felony. We don't have to put those things into statute where they can be interpreted or subject to litigation. Let's keep it as simple as we can. I think the committee was right on with their original bill. And so this is why I'm in favor of FA54 to the extent that we take this out for the discretion of the court or the consideration of the court rather. There is the other part of the bill, they have added some considerations for the Parole Board. I'm not so certain that those are necessary. It might be useful. But all of this is coming from the judgment of the Judiciary Committee. And I don't know, I guess I could ask if the court had or

rather the committee had any input from prosecutors or defense attorneys on the drafting of AM151. But I'll bypass that for now. I do want to talk about what Senator Seiler said. The case where the 14-year-old, I mean he gave us a case, 14-year-old was driving, didn't know that anything was going to happen, was completely innocent, and then got roped in and convicted of a Class IA felony. I think that would be extraordinary if that would happen because I think in the trial of the case or whatever the penalty that the prosecution asked for, they would not ask for that under those circumstances. And I don't know whether this was an actual case that he was quoting but I think that would be extraordinary. That person who was not involved in any intent, and there has to be intent as I understand it, to reach a penalty this severe, you have to be involved in a burglary or you set out with somebody to do something wrong and someone gets murdered as a result of it or it's a Class IA felony, that would involve both of them. They both knew that they were doing something that they shouldn't. In the case if it were a completely innocent person just driving, I just doubt very much that they would ever be put in a position where they would be sentenced to life in prison without parole. With that, if Senator McCoy would like some additional time I'll be glad to give that to him, Mr. Speaker. [LB44]

SPEAKER ADAMS: Senator McCoy, you're yielded 58 seconds. Senator McCoy waives the time. Senator Lathrop, you're recognized. Senator Lathrop? Senator Carlson, you're next in the queue. [LB44]

SENATOR CARLSON: Thank you, Mr. President and members of the Legislature. I'm going to go back to the example that I used the last time that I was on the microphone, and then I'd ask several people if they would to listen to what I'm saying because I'm going to call out several of you to get your opinion. Senator Seiler gave the example that we have a 17-year-old that was a passenger in a car and the 14-year-old is the driver. And even though he's 14 we know that they have the ability, many of them, to drive at age 14. And I'm going to say this is a part of the circumstance, which I think it would be. The 14-year-old is scared to death of the 17-year-old that's in the car. And so the 17-year-old wants to go in and buy a pop someplace. Stop the car. He goes in. He shoots and ends up killing the attendant. Now the 14-year-old has had a past history of problems in school. He got caught stealing a baseball glove from Scheels and he had a three-day suspension from school for fighting. Now, I asked Senator Seiler before whether or not both of these individuals could be convicted of a IA felony, and the answer is yes. And it appears to me that if the amendments to AM151 are passed and we have IA felony convictions, the judge has no choice but to give a minimum 60 years to the 17-year-old as well as the 14-year-old. I'd like to address a question to Senator McCoy if he would yield. [LB44]

SPEAKER ADAMS: Senator McCoy, would you yield? [LB44]

SENATOR McCOY: I would. [LB44]

SENATOR CARLSON: And, Senator McCoy, you heard the situation there where both of them, unless I'm not understanding it, they would be given 60-year-minimum sentences. Do you agree? [LB44]

SENATOR McCOY: That's incorrect, Senator Carlson. [LB44]

SENATOR CARLSON: Okay. Let me know why it's incorrect. [LB44]

SENATOR McCOY: Okay. Because with good time, Senator Carlson, a 60-year sentence is actually 30. [LB44]

SENATOR CARLSON: I know that. I know that. But the judge has no choice to begin with to give the minimum 60 because that's in the bill. Isn't that correct? [LB44]

SENATOR McCOY: Well, but there would be...it's my understanding, Senator Carlson, there would be other circumstances that would come up during a trial as Senator Nelson just described. So that's not necessarily the case. I think you'd have to know more about the hypothetical situation you're describing before I could say yea or nay on that. I don't know that I can give you an unequivocal answer to that. [LB44]

SENATOR CARLSON: Well, they were both convicted of IA felonies. And unless I'm totally wrong, then the bill says, not with FA54 but with the other amendment, it's a 60-year-minimum sentence. [LB44]

SENATOR McCoy: But, Senator, I don't know that both would be convicted. If they both were convicted of IA felonies, that may be the case. But my point back to what Senator Nelson brought up earlier, I don't believe that you would ever get to that point because a judge would probably have...there would be different sentences for those two individuals that you describe. [LB44]

SENATOR CARLSON: Okay. All right. Thank you, Senator McCoy. I'd like to address Senator Nelson if he would yield. [LB44]

SPEAKER ADAMS: Senator Nelson, would you yield? [LB44]

SENATOR NELSON: Yes, I will. [LB44]

SENATOR CARLSON: Now, Senator Nelson, you were listening to this, and they both were convicted of IA felonies. And if we have FA54 and FA53 I think it is that become a part of this bill, how does the judge have any leeway other than a 60-year minimum? [LB44]

SENATOR NELSON: He would not have any leeway as I see that work... [LB44]

SPEAKER ADAMS: One minute. [LB44]

SENATOR NELSON: ...in the facts that you give us there. [LB44]

SENATOR CARLSON: Okay. [LB44]

SENATOR NELSON: The problem is that those facts are probably in my estimation never going to happen. And if they do, if for some reason there's a prosecutor and there's a court, a jury that convicts that 14-year-old, then it certainly has got to go up on appeal, and that would be rectified one way or another. [LB44]

SENATOR CARLSON: All right. Now that is one thing that's allowed in the law. They have the appeal of that conviction. But it is possible that that could be the conviction on both of these and that's bothersome to me. I think I'm about out of time. Thank you, Mr. President. [LB44]

SPEAKER ADAMS: Thank you, Senator Carlson. Senator Coash, you...do I see five hands to call the question? I see five hands. The question is, shall debate cease? All those in favor vote aye; all those opposed vote nay. Senator Ashford. [LB44]

SENATOR ASHFORD: Yeah, could I get a call of the house and a machine vote. [LB44]

SPEAKER ADAMS: There has been a request for a call of the house. All in favor vote aye; all opposed vote nay. Record, Mr. Clerk. [LB44]

ASSISTANT CLERK: 32 ayes, 0 nays to go under call, Mr. President. [LB44]

SPEAKER ADAMS: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senator Conrad, would you check in? Senator Mello. Senator Ashford, how do you wish to proceed? All right. There has been a request for a roll call vote in regular order. Mr. Clerk. We are voting to cease debate. [LB44]

CLERK: (Roll call vote taken, Legislative Journal pages 938-939.) 32 ayes, 14 nays, Mr. President, to cease debate. [LB44]

SPEAKER ADAMS: Debate does cease. Senator McCoy, you are recognized to close on the amendment. [LB44]

SENATOR McCOY: Thank you, Mr. President. And again, members, for those that may

have been outside of the Chamber doing other things when we had this discussion since lunch, this is the first of the divided amendment that Senator Lautenbaugh brought to us this morning in AM874. And what before you have the portion of this amendment that we're talking about now is removing lines 12 through 23 on page 1 of AM151 and on page 2 striking lines 1 through 9. And I still have reservations as I've had at every point I've been on the microphone this afternoon. I appreciate the sidebar discussions that I've been able to have with a number of members of the Judiciary Committee and others along these lines. I struggle with understanding of why we're putting into statute what is dicta language from Miller v. Alabama, the Supreme Court, U.S. Supreme Court decision. We don't have a definition of impetuosity and we don't have a definition of what is a comprehensive mental health evaluation for purposes of this amendment. Again I'll say what I've said earlier. I don't believe that I or anyone that I've heard on the microphone or Senator Lautenbaugh, although I don't want to speak for him, when he brought this original amendment that I agreed to represent this afternoon believe that something shouldn't be done in this area. I don't believe that we have that choice nor maybe should we. But I do think if we're going to go down this road, let's do it right. You may or may not agree and I fully respect that as we all have that decision to make as members. And perhaps this can be handled at a different moment throughout this legislation's history as it goes forward that these concerns that we've raised this afternoon can be addressed. But I'll go back to what I said when I opened on this amendment. If we aren't going to have definitions for these items in statute, then let's take them out. It's my understanding this happens already in practice with a comprehensive mental health evaluation. So if we're not going to have definitions, let's take it out. If we are going to have it in there, then let's address it with definitions. And with that, I would close. Thank you, Mr. President. [LB44]

SPEAKER ADAMS: Thank you, Senator McCoy. Members, the question is, shall the amendment to the committee amendment to LB44 be adopted? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk. [LB44]

CLERK: 16 ayes, 27 nays, Mr. President, on adoption of the amendment to the committee amendments. [LB44]

SPEAKER ADAMS: The amendment is adopted. The call is raised. Mr. Clerk, you have an announcement. I'm sorry, it is not adopted. [LB44]

CLERK: Yes, Mr. President, I do. Thank you. Your Retirement Systems Committee chaired by Senator Nordquist reports LB553 to General File with amendments and LB638 and LB639 indefinitely postponed. Enrollment and Review reports LB263 to Select File. I have notice of hearing from the Education Committee. And Senator McGill offers a new resolution, LR144. That will be laid over. That's all that I have, Mr. President. (Legislative Journal pages 939-941.) [LB553 LB638 LB639 LB263 LR144]

SPEAKER ADAMS: I raise the call. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign: LR121, LR122, LR123. [LR121 LR122 LR123]

Mr. Clerk for the next amendment. [LB44]

CLERK: Mr. President, the next amendment is the other component of the original Lautenbaugh amendment. This is FA53 which is offered as an amendment to the committee amendments. (Legislative Journal page 936.) [LB44]

SPEAKER ADAMS: Senator McCoy, you are recognized to open on the amendment. [LB44]

SENATOR McCOY: Thank you, Mr. President. What you have before you again is as just mentioned by the Clerk is the second part of the divided AM874 which Senator Lautenbaugh introduced and opened on this morning and I would stand up to introduce and support this afternoon to you. And this would very simply although I'm certain probably in light of the discussion that will follow which won't be simple, but this is a simple, at least in wording, change to AM151. And that would be on line 11 of page 1 striking 30 and inserting 60 years of imprisonment of a minimum sentence of life imprisonment...a minimum sentence, pardon me, of 60 instead of 30. And as we talked about earlier today, with good time this would mean 30 years instead of what is in the committee amendment which would be with good time 15 years. I believe this to be particularly appropriate, especially if we're going to go forward with the language that's in the committee amendment that now apparently will stay in the committee amendment due to the failure of FA54 to advance a moment ago. If we're going to have that comprehensive mental health evaluation, a look at all those mitigating factors, it seems to be appropriate to me in line of the heinous nature of many of these crimes that we go to 60 years, which would mean 30 years. I think this is appropriate in light of the fact that a second offense sexual assault carries with it a mandatory minimum of 25 years. I think with a loss of life involved it would be appropriate to have that be 30 years which is a...again with good time what you have with 60. I'm sure there will be a good discussion about the merits or not of this and I look forward to that discussion. Thank you, Mr. President. [LB44]

SPEAKER ADAMS: Thank you, Senator McCoy. Senator Schumacher, you're first in the queue. [LB44]

SENATOR SCHUMACHER: Thank you, Mr. Speaker, members of the body. You know, I've been looking at this Supreme Court decision and I'm not so sure we're not even heading down the wrong path entirely because the court makes no argument in here that look at 30 years or 60 years will solve the problem. But the court, first of all, let's look at exactly what they say when they actually rule on the law. They say: we therefore

hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. A state is not required to guarantee eventual freedom, but must provide some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. They finally say: we require it to take into account how children are different and how those differences counsel against irrevocably sentencing them to a lifetime in prison. And then in their parting shot on the case where they do the holding, they say: a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles by requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole regardless of their age and age-related characteristics and the nature of the crimes, a mandatory sentencing schemes before us violate the Eighth Amendment. I think what the court is saying is that at sentencing there's got to be the opportunity to determine that a juvenile was so susceptible to this bad judgment that they qualify for a different sentencing. And that the decision should be if the juvenile is incapacitated because of its age, then another set of rules apply. Those rules might be while at the parole level, or they might be at the sentencing level; but what the court is only saying is that you can't absolutely lock the doors on a life sentence. It is not saying that we're fixing the problem by giving the court the opportunity to lock the door on a life sentence or a 30-year sentence or a 60-year sentence. I think that we're also facing another particular issue here. And the issue that we're facing is that by lowering the bar on the mandatory or the minimum end of the sentence, let's say instead of 30 we had 1 year, 1 year to life. We are beginning to create a situation where two equally situated defendants, one a few days...born a few days earlier than the other get vastly different sentences. One because they turned 18 they get a life sentence and the other one because they didn't could get by with a year sentence if that's what the law said. And that begins to bring in equal protection arguments. Thirty years to life sentence, is that an equal protection argument? I can see someone certainly making it. And we're going to have to address that disparity based upon one day of age and that's what we're saying here. We don't have a gradation; we don't have any discretion, it's if you're 18 you're cooked, and if not, you get to play by a different set of rules, if you're one day younger. I think that plays into, from a practical matter, if you have these gang situations,... [LB44]

SPEAKER ADAMS: One minute, Senator. [LB44]

SENATOR SCHUMACHER: ...the kids who are 19 in charge of the gangs, setting up the kids who are a day or six months less than 18 to go do the dirty work for the gang and maybe giving them rewards for doing it. I think the lower we set this bar for our minimum sentence, the more those problems come into play. Now whether 60 is better than 30, I'm not sure, but I think it's 50, you know, we may be looking at a 50 or with a...that would mean 25 years before they come up for parole. But these are serious offenses and if the problem is that some juvenile who is innocent in the back seat of a car while his buddy shoots somebody up in a burglary, then maybe that statute we

should address that they...requiring an active role for juveniles before they can be convicted of first-degree murder. But I think that we may be heading down the wrong road and I don't think the committee took the right direction. [LB44]

SPEAKER ADAMS: Time, Senator. Senator Coash, you're next. [LB44]

SENATOR COASH: Thank you, Mr. President. Senator Schumacher has done a good job of going through some of the court decisions and I'm going to talk to him more about that because he made some good points. But I want to take this opportunity to remind the body why we're here and why LB44 is in front of us; why it was prioritized by the committee. As it stands today, colleagues, we have a law on the books that has been found to be unconstitutional. We may have liked it. It may have made us feel good to have that law on the books, but right now we've got it and the Supreme Court of the United States has said, that doesn't work. States, you've got to figure out how to negotiate that and you've got to do that state by state. LB44 is Nebraska's attempt at addressing what the court says we have to address. If we don't address it, if we don't pass a bill, whether it's this as amended or a different version of this bill, this defaults back to the courts. But what this debate really should be about with regard to the FA53 that we have in front of us, it's very simple, it changes the word "thirty" and puts it into "sixty", but it really is a little bit more than a number of years. This is about judicial discretion. And I know Senator Ashford covered this, proponents and opponents of the years have covered this, but it bears repeating that just because AM151 says it's a minimum of 30 doesn't mean that the judge won't give them life. It doesn't mean that the judge won't give them 50; doesn't mean they won't give them 60 as FA53 says. Further, if the sentence is 30, it doesn't mean that that offender jams out of prison after 15 years. We continue to talk about the half of that sentence as if it's mandatory that that inmate walks out after they serve half of their sentence. That's not the case. The Parole Board gets involved in that. So, colleagues, you have to ask yourself, do you trust the judges that have been appointed to sit on the bench and make decisions? Do you trust that they will look at the circumstances of the case that's in front of them and if it's a heinous case they're going to throw the book at the offender. I don't know if anybody has used any examples of the kinds of cases that people are worried about somebody jamming out at 15 years, but here's what I would ask you to do, if you're looking at a particular case, maybe it's one of the dozen or more that are currently serving life sentences, they've done some pretty horrific things, what I would ask you to do, whether it's today or between General and Select, if we make it that far, but take a look at that case, call a judge in your district and ask him. If you were sentencing this case and instead of just life... [LB44]

SPEAKER ADAMS: One minute. [LB44]

SENATOR COASH: ...you had 30 to life, what would you give him? And then come back and tell the rest of us what that judge says. Right now the judges have to give

them life. The Supreme Court says we have to give a bottom. But there is discretion there, colleagues. And I would urge you to talk to the judges in the communities that you represent and ask them. If this happens and you have a floor, are you going to give it to them? And of course the judge is going to say, well, I have to look at the merits of the case and all that, but based on what you know. They did something this terrible, would you give them 30? And then call a Parole Board member and say, would you let them jam at 15? And if they're honest with you, they'll tell you no, they'll say no if it's that bad, we're going to give them a higher sentence. [LB44]

SPEAKER ADAMS: Time. [LB44]

SENATOR COASH: Thank you, Mr. President. [LB44]

SPEAKER ADAMS: Senator Burke Harr, you're recognized. [LB44]

SENATOR HARR: Thank you, Mr. President, members of the body. This is a tough call and this is why we are here is to make policy. The Supreme Court is pretty clear that we should teach...treat juveniles different than adults. And I'm going to quote, it says: their lack of maturity and underdeveloped sense of responsibility leads to recklessness, impulsivity, and heedless risk taking. They are more vulnerable to negative influences and outside pressures including from their family and peers. They have limited control over their own environment and lack the ability to extricate themselves from horrific crime-producing settings. And because a child's character is not as well-formed as an adult, his traits are less fixed and his actions are less likely to be evidenced of irrevocable depravity. I think that's important to keep in mind. These kids are still growing. So the question is, when do they stop and what do we want...how do we want to handle this? The court says we've got to take into account these actions. Thirty years, probably too long, in my opinion. Again, I give you the case of...that I gave this morning, the felony murder where an accomplice goes into a building, a store with his 25-year-old gang-bang buddy. He may not know what he's doing. He may be high on drugs. He's very susceptible to those around him. He may not be, we don't know. Look at the situation Senator Seiler brought up. I trust our prosecutors to make the right decisions; and I trust our judges to make the right decisions to look at the facts, to analyze what are the mitigating and aggregative situations. It's 60 years, man, that's too much. That kid is 48 years old. He will have spent, possibly, two-thirds of his life in prison, or her life in prison. They may not have any skills. They may become a burden on society. Let's give these kids a chance; let's give them some hope that they can get out. And just because it is 60 doesn't mean they will get out in 30 years. You could sentence that kid to...if we set the bar at 30, there would be nothing to prevent a judge from sentencing that kid to 60 to life, absolutely nothing. But what we're doing is we're giving the judges the tools. We're playing policymaker here today, which is good. We're not playing, we are policymakers. But what we're doing is making up facts and trying to come up with situations. And the fact of the matter is, we won't think of them all and we may not know

them all, but a judge will. A judge is an individual who is help or retention. They are accountable to the people just as we are. But they're going to know the facts, the specific facts of a case. And again, I think 60 years is just too long. I think we've all seen 30 for 30 on ESPN, there was a basketball player and I was trying to look it up, I didn't get a chance to before I got called, but he killed...he was a minor, he killed another...he killed a basketball player, star basketball player in south Chicago. He served his time, he's out, and he's now a viable member of society. But he didn't do 30 years, he only did about 20 years. So it proves that you can do 20 years and still be a good person. These kids, again, look at what the language says and when you look at the language I think I cannot support this amendment. Thank you very much. [LB44]

SPEAKER ADAMS: Thank you, Senator Harr. Senator Chambers, you're recognized. [LB44]

SENATOR CHAMBERS: Mr. President, members of the Legislature, once again I believe we have to take this matter in small bites, so I'm going to do that. I have said off and on this floor that if a person comes from a family that has elite status, consideration will be given. If a person is a politician, he or she will be given a break and other things like that. Well, it just so happens, and I touched on this case, in Sunday's paper, in the Lincoln Journal Star, page B3, headline, Misconduct Charge is Filed Against Grand Island Mayor. This is to show the breaks that grown people get. A misconduct charge has been filed against Grand Island Mayor, Jay Vavricek, who recently was arrested on suspicion of drunken driving in nearby Howard County. Grand Island councilman, Mike Pollock, filed the charge Friday with city attorney, Bob Sivick. The misconduct charge cites the mayor's drunken driving arrest March 2. He pleaded no contest to reckless driving and was fined $500. Drunk, he was under the influence. He has no first offense drunk driving now. He's the mayor. All of this talk about the danger that drunk drivers present on the road, not a senator will stand up and object to that. But when it comes to children, Senator Nelson so concerned, senator etcetera. I was listening to Public Radio one day and they had these Irish bands and one...I forget the guy's first name, let's say it's John, it's called "John, what's his name, and them other fellers." That was the name of the band, "John, what's his name, and them other fellers." So Senator Nelson and them other fellers on the floor of the Legislature are so harsh when it comes to juveniles. If they had any concern as they indicate, and I'm not going to say they haven't done this, we'll have a chance when we get to the death penalty bill. There are adults who committed atrocious murders, including setting people afire alive. One guy set a woman afire and cut off her breasts. Others cut the head off a person and put the parts in the trunk of a car. A Nokes family, in one of the rural communities, dismembered a body, they had a three-way love affair, wrapped the parts in butcher paper and threw it in a reservoir. None of them got the death penalty. These people who say they're so concerned are not concerned at all because they have not read actual cases, but I'm going to present them. Now here's a case of a mayor. The Supreme Court has said that public officials have a higher standard to reach, they're held accountable to a higher

standard. When they violate that standard, they have to be called to account. Now when I mentioned this the other day, nobody on the floor thought it was wrong to give the mayor a reckless driving charge. Suppose it was a kid from the university whose future might be at stake. When they arrest this child, and let's say he or she is not a member of a prestigious family, do they give these children routinely reckless driving charges so they will not have a first offense drunk driving on their record? Do they do that? You know they don't do it. We place a higher standard on our children than we do ourselves as adults when it comes to being sentenced or even charged. What none of these lawyers on the floor have talked about, who are for the harsh punishments, it's not ultimately the judge, it is the prosecutor who files the charge. That's why a lot of these people who committed the atrocious murders are in the general population... [LB44]

SPEAKER ADAMS: One minute, Senator. [LB44]

SENATOR CHAMBERS: ...and not on death row. And it also depends on who wins the race to the prosecutor. There are cases in Nebraska where the one with the greatest culpability among two or three people made it to the prosecutor to rat out the other ones and this one was allowed to plead to a lesser offense. That's the way your system works. Senator Nelson knows it. Senator Schumacher knows it. Every lawyer on this floor knows it. But they pretend not to know it when we're talking about how we're going to deal with our children. Thank you, Mr. President. [LB44]

SPEAKER ADAMS: Thank you, Senator Chambers. Senator Lathrop, you're recognized. [LB44]

SENATOR LATHROP: Thank you, Mr. President and colleagues. I'm opposed to FA53. The mandate to the Legislature is to come up with an alternative to life in prison without the possibility of parole. And there is a reason we have that mandate. It's founded in the fact that we are talking about juveniles. And those of us that spend most of our days down in the Judiciary Committee have come to appreciate, and you'll hear more about this as the session goes on, that these folks have an underdeveloped mind and we let them drive cars and we let them do some adult activities, but the fact of the matter is, and the science suggests that their minds aren't fully developed, probably not until their mid-20s. And as a consequence what happens, and those of you who are my age and have raised kids know this already that there is some science behind it. You know, you might have asked your kids, have you lost your mind or what were you thinking, that's what this is about, because they don't think like small or young adults, they have...because their mind isn't fully developed they're capable of impulsive things and you name it, poor decisions, poor choices. So what the case recognizes is the science. What we need to do in this body is recognize that. Now it's not easy. I've heard Senator Carlson say he's generally a law and order guy. Who isn't? We all recognize the importance of our duty as policymakers to provide a safe society or contribute to it in the policies that we make. But in the end, we're being told that we need to recognize the

difference between adults and juveniles. And why is that important? You've heard this, maybe I can expand on a point that somebody else tried to make this way. First-degree murder, there's two variations of first-degree murder. One is, if you intentionally, deliberately, with premeditation go out and kill somebody. So if you're thinking about it and you decide, you know, I want to eliminate the neighbor. And you wait for him, and you...he gets out of his car after work and you're hiding in the bushes and you shoot him. That's a premeditated, calculated first-degree murder. The other type of first-degree murder is when it happens in connection with a felony. So somebody goes into a liquor store to hold it up; don't intend to kill somebody, but they do in the course of committing a felony. That gets you to a first-degree murder. Now the important thing for you to understand is that everybody associated with that activity is now subject to being convicted of first-degree murder. So the kid in the car...and this is where the inequity really...really the inequity is most obvious, some 16-year-old kid is driving a car, a 20-year-old goes in to rob the liquor store; the 16-year-old may not even know he's got a gun; the 20-year-old goes in and shoots somebody. That was never the plan. But guess what, they can both be convicted of first-degree murder. Now, what were the circumstances that led the 16-year-old kid to drive? We should be able to take those into account. We should be able to take into account the fact that a 20-year-old can talk a 16-year-old into something that dumb. That's what this is about. And to have the functional equivalent of a life sentence, 60 years, isn't solving the problem. In fact, if we do nothing, the courts will probably have to fashion a solution that won't be that bad. So this is hardly an amendment to accept; it's hardly an alternative to... [LB44]

SPEAKER ADAMS: One minute. [LB44]

SENATOR LATHROP: ...doing nothing, frankly. So I think the 30 makes more sense. It does not mean that everybody who does something is getting out in 30 or 15. The courts, as you've heard, will still exercise discretion, still determine culpability, take into account the immature, underdeveloped mind and then enter an appropriate sentence. And that's what we're trying to accomplish with the underlying AM151. And I think the FA53 frustrates that process, so I would encourage your "no" vote. Thank you. [LB44]

SPEAKER ADAMS: Thank you, Senator Lathrop. Senator Pirsch, you're recognized. [LB44]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. Just kind of a few observations, and I appreciate the dialogue that's been going on here today. With respect to those who would caution that we should just trust in judges or trust in the prosecutors and, therefore, that kind of mitigates the need to have this legislative policymaking body determine mandatory minimums. I think it was...a statement was...well, in the heinous cases, we can just trust the judges to understand that and set an appropriate sentence. And yet we are not...we don't do that. We have not done that thus far with respect to our criminal statutes. We could; we could just say for whatever

crime that one...that is committed, we just give the elements of that...judge is given discretion to operate and to give anywhere from zero days in jail, zero-dollar fine up to lifetime in jail and a $100,000 fine. But I don't think that has historically been the role of this body and I don't think it's appropriate. We in this body set policy. The discretionary...I'm sorry, the discretionary area that exists within the constitutional boundaries that the court flushes out makes sense. We're closest to the people and we're elected. So I would just say that with respect to this particular situation, it seems to me, from what I've heard, in terms of deciphering what the Supreme Court came out with in this case, which just only recently came out with, and so there hasn't been, I guess, a lot of reaction amongst a great majority of states. I think there's...so my understanding is I think we're all pretty agreed that six states have come out and passed legislation among the 50 thus far. It's not clear to me, I'm getting different statements from the sides with respect to the numbers that have been thrown out, 25 years here...I think 25 in North Carolina, 35 in Pennsylvania, etcetera, whether those are mandatory minimums or simply minimums. And it seems kind of a semantic play there, but it really has very substantive different outcomes there because in our particular jurisdiction, because of the way we're structured, someone who is given a 30-year sentence, I think others have pointed out, can be out the door in 15 on parole. And so I would like to hear more about the actual, with certainty and knowledge, about in those few states that have acted over the last...I guess this was just this past summer when this decision came down, what exactly...how are those few states structured? I don't know that...we're just not at the beginning of this. And with that I would yield the time to Senator Ashford if he would like to say a few remarks. How much time do I have left, Mr. President? [LB44]

SPEAKER ADAMS: One minute, 20. [LB44]

SENATOR PIRSCH: Okay. [LB44]

SPEAKER ADAMS: Senator Ashford, you're yielded the time, it's 1 minute, 15. [LB44]

SENATOR ASHFORD: Thank you. Thank you, Senator Pirsch, that's nice of you. I...look it, there is no...there is no certainty or math that is unequivocal in determining what the proper number of years should be in our state. What we do know is that most all the states, I'm sure to some extent, are trying to address this issue. Six states have come up with minimums that are in the neighborhood of what we're proposing. The...I want to, just very briefly, look at the holding. And I'm going to read the holding to you, I think, if I can find it. The holding in the case itself, and it says: we therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders. A state is not required to guarantee eventual freedom, but must provide some...and these are the critical words that this committee was left with, must provide some meaningful opportunity to obtain release... [LB44]

SPEAKER ADAMS: Time, Senator. [LB44]

SENATOR ASHFORD: ...based on demonstrated maturity. [LB44]

SPEAKER ADAMS: Senator Wallman, you're next in the queue. [LB44]

SENATOR WALLMAN: Thank you, Mr. President, members of the body. This is a tough issue. We should be spending, probably, more time rehabilitating. And lots of parents sail on the "great sea of matrimony" and with no guidelines, you know, for how to raise their children, so they're sailing without a paddle or a rudder. So what are we going to do? We should set some guidelines here, I think, to help children in this 15, 30, 50, 60, 70, depends on what your feeling is and what the heinous crime is. And I was actually involved in the court system with a poverty kid in Auburn. And so it was pretty interesting to go through there and find an attorney who would take this case against the county prosecutor. But I found one, a pretty good one. So it can be done. But the poor child had...the parents just literally gave up on him, 13 or 14 years old. And so I told the mother, hey, you got to do something here, you know, you got to be the mentor; you got to be the person that helps this child. So I don't know whether this child went to Minnesota or Wisconsin somewhere, but hopefully he straightened out. So, you know, he was going to go incarcerated at that young age? It's unbelievable. That's not going to help, folks. Thanks, Mr. President. [LB44]

SENATOR GLOOR PRESIDING

SENATOR GLOOR: Thank you, Senator Wallman. Senators still in the queue: McCoy, Chambers, Schumacher, and Coash. Senator McCoy, you are recognized. [LB44]

SENATOR McCOY: Thank you, Mr. President. And if Senator Ashford would yield, I would be very interested in hearing him continue his thought, particularly if he wouldn't mind sharing what page of the Miller v. Alabama Opinion he's reading from in the holding portion of it. [LB44]

SENATOR ASHFORD: I'm reading the holding on the bottom of page 16. And that being the language that this committee was given to look at in trying to craft a solution that would be constitutional realizing that we already know that the 35 years in Pennsylvania is under constitutional attack. Certainly the 60 years in Iowa is under constitutional attack. So we were reading...if you read those words, you have to come up with a scheme that is not just throwing darts at a dart board, but trying to...you have to read all...the four corners of the Opinion to glean what it is they're trying to say here. And I think the holding just substantiates the approach that we have taken. And that is to look at the entire system of how we sentence juveniles who have committed these offenses and look at the factors that were mentioned in the case. And then the holding seems to really tell us that we need to be very careful and cautious in how we craft that

remedy. So that was what I was reading. But I can give you your time back, Senator. [LB44]

SENATOR McCOY: No, I appreciate that, Senator Ashford. And I'd like to continue along that vein because that was what, actually, I'm very "appreciant" because I was actually going to get you on the mike...microphone and ask you that question; because I too read...reading from the holding on top of page 17 and it's talking about the state: must provide some meaningful opportunity to obtain release based on demonstrating maturity and rehabilitation. You just mentioned Pennsylvania, and I think, Iowa, and forgive me if you mentioned another state and I missed it, help me understand as not being a member of the Judiciary Committee, how did you get to 30? I know, I think there was another year that you originally started at. [LB44]

SENATOR ASHFORD: Well, it started... [LB44]

SENATOR McCOY: I'm trying to understand...I know it's not an arbitrary number. But for purposes of my understanding, help me understand the nature of that, because I read that to mean some meaningful opportunity. Well, how would you not have some meaningful opportunity at 60 which could be 30? [LB44]

SENATOR ASHFORD: I don't think 60 is even within the ballpark. I think...well, here's what we did though, to your point, is...you know, 60 is just beyond the pale. And it would never, in my view, would never pass constitutional muster. So what we did do though, to your point, is we looked at other states. And we looked...not to tell us what we had to do, but to start giving us a guideline to where this sort of minimum should be. And we started at 20. We thought about 25 and then we landed at 30. And because of what Senator Lathrop has said, and others have said on the floor, is that there are those crimes that juveniles commit where there...most specifically the felony-murder rule where there's not an intent going in to commit the felony, to commit a homicide, where juveniles are...they're not innocent, but they're bystanders, they're accessories, they're whatever. And to...and to have that juvenile looking at even 30 years, if they get parole, is, in my...in our view, not consistent with the language, it's not a meaningful opportunity in our view to obtain release. And that's what we did. I mean, that's the process...I mean it was a little more...we spent a lot of time on it, but that's, essentially, where we're trying to go. [LB44]

SENATOR GLOOR: One minute. [LB44]

SENATOR McCOY: Thank you, Mr. President; thank you, Senator Ashford. I appreciate that. But how do you then determine, and I understand we may have to continue this here... [LB44]

SENATOR ASHFORD: Okay. [LB44]

SENATOR McCOY: ...further time on the mike, but how...Senator Ashford, how do you determine what is a meaningful opportunity, [LB44]

SENATOR ASHFORD: It's hard. [LB44]

SENATOR McCOY: ...because I'm having a hard time understanding when you say it's under constitutional attack, or it may not present...or pass constitutional muster, who interprets...I mean, how do you figure out what that standard is because it didn't...the Supreme Court didn't outline that in Miller v. Alabama... [LB44]

SENATOR ASHFORD: Right, right. [LB44]

SENATOR McCOY: ...or any of the subsequent cases. [LB44]

SENATOR ASHFORD: In fact, your point, they stopped. They gave us the language and said we don't need to go any further. And that's what they do, courts do that. But I...but I...they were making...you have to read the whole string of cases going back to the death penalty case. And there has been an accumulation of decisions by the Supreme Court and federal courts that are making a clear difference. [LB44]

SENATOR GLOOR: Time, Senators. Thank you, Senator McCoy and Senator Ashford. Senator Chambers, you are recognized. [LB44]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, a few more comments about how these decisions are reached by the U.S. Supreme Court. The court has said over and over, and the Nebraska Supreme Court has said over and over that when they reach a decision, they want to rule as narrowly as possible. They don't want to decide anything beyond what they have to decide. This case presented to the court was based strictly on the issue of whether or not somebody who was under the age of 18 and committed a crime could be sentenced mandatorily to a life sentence without possibility of parole. That was the narrow issue; that was what the court decided. The court did not need to say what an alternative sentence would be, that had not been presented. It had not been briefed; it had not been argued. If you say 60 years, 70, or 90, as Jon Bruning, the Attorney General, said the Pardons Board wanted to do, then the issue of excessive sentencing could come up again. And the court could say, I'm not saying it would, that this in effect amounts to a life sentence without parole. The Legislature cannot do by stratagem what it cannot do directly. So that issue would still be out there. But if this bill is not passed, the court is going to vacate everyone of those sentences. And the court may give a term of years. And the court could even say that since all of these men were sentenced under an illegal sentencing structure, their sentence is illegal, their sentence now will be reduced to the time served. Some of them have been there four decades and longer. There are people, adults, in the general

population of the prison who committed far worse crimes than any of those juveniles. And when the Attorney General said, because his little feelings were hurt when he didn't get his way, that these are some of the most dangerous people in Nebraska, that's not true. That's not true at all. What we're looking at is an attempt by the Pardons Board and their minions to circumvent what the Nebraska Supreme Court said. The Supreme Court told the Board of Pardons that you cannot change these sentences in the way you want to, you've got to go through the court and the trial procedures. That means every case has to be handled separately. No lawyer representing any of these persons wants his or her client to appear before the Pardons Board. So the Pardons Board is out of the picture. They will not be allowed to commute one of these sentences to 50, 70, or 90 years, as the Attorney General said they would do. Nobody knows for sure what the court will do except this: When one of those persons gets to the Supreme Court, and he will, that sentence will be thrown out. Then the person is in prison without a legal sentence in place. What happens then? When you were talking about the death penalty, when the courts said you cannot have a mandatory death penalty, the conviction was not overturned, the death penalty was thrown out, and the person's sentence became life. That cannot happen here. We're dealing with something less than a death sentence. The court has already said an entirely different approach has to be taken when you're dealing with juveniles, no matter how horrible the crime was. You're dealing with these young people who are not totally... [LB44]

SENATOR GLOOR: One minute. [LB44]

SENATOR CHAMBERS: ...developed psychologically, neurologically, or any other way which would add to the culpability or sense of responsibility that the court is going to use in setting a sentence. So if an adult committed a crime over here and a juvenile committed the same crime over here, what's all right for the adult may be cruel and unusual toward the child. And the Supreme Court has made that clear. We don't have to put every word of the Supreme Court's decision into statute books, and we should not. The Judiciary Committee selected those items that were most relevant and put those into the bill and the body has approved thus far. Thank you, Mr. President. [LB44]

SENATOR GLOOR: Thank you, Senator Chambers. Senator Schumacher, you are recognized. [LB44]

SENATOR SCHUMACHER: Thank you, Mr. Chairman, members of the body. Our constitution at the federal level and the state level requires that we have equality before the law and that our laws have due process and they make sense, they are not arbitrary in nature. Senator Ashford, would you yield to some questions? [LB44]

SENATOR GLOOR: Senator Ashford, would you yield? [LB44]

SENATOR ASHFORD: Yes. [LB44]

SENATOR SCHUMACHER: Senator Ashford, in a hypothetical situation you have twins conceived. And for one reason or another...and they're identical twins, one has got to be delivered a month before the other. And the twins grow up in a rather rough environment and a week before the second...the latter born's birthday, they get into trouble and they each engage in shooting down an innocent bystander and they would otherwise be guilty of first-degree murder. Now under this particular scheme as it's laid out, the one twin would be subject to a life imprisonment charge, or sentence without parole and the other would get whatever benefits come of LB44. How do we justify that as being rational? [LB44]

SENATOR ASHFORD: I don't follow. The first one...the first twin committed a murder prior to... [LB44]

SENATOR SCHUMACHER: No, they both do it together, but one happens to have been born a month earlier. [LB44]

SENATOR ASHFORD: Oh, I'm sorry, so they're a different age. [LB44]

SENATOR SCHUMACHER: Right, they're different...the same age if you go from conception, but... [LB44]

SENATOR ASHFORD: Right. [LB44]

SENATOR SCHUMACHER: But a month different otherwise. [LB44]

SENATOR ASHFORD: They're conceived the same time, but they're... [LB44]

SENATOR SCHUMACHER: Right. [LB44]

SENATOR ASHFORD: ...because of the...that's a Sudoku question. I'm going to have to think about it. But I understand what you're saying. And we draw...and we draw lines all the time. And so we have to think about that as we proceed through this debate. But I...we don't make law, necessarily for that kind of case. [LB44]

SENATOR SCHUMACHER: Thank you, Senator Ashford. And that's the point. It is an arbitrary line drawn in the sand, based upon the number 18, a number which does not appear in the Supreme Court's Opinion, nor does the Supreme Court say you can fix all this by just giving a lesser term of years arbitrarily. So we've got a legal argument that's now being created that we are creating two sentencing schemes for no rational distinction. We already know in the one hypothetical, and there are others very similar, they don't have to be twins, they don't have to be just a week apart. We are doing something that the court is not requiring us to do. The court says you're supposed to

look at three things: maturity and an underdeveloped sense of responsibility that leads to recklessness, impulsivity and heedless risk taking. Secondly, you're supposed to look to a defendant who is more vulnerable to negative influence and outside pressures including from their family and peers that they have limited control over their environment and lack the ability to extradite themselves from crime-producing settings. And third, a child's character is not as well-formed as an adult and he has...his actions are less likely to be evidence of irretrievable depravity. I would suggest that instead of going down this particular route, what we do is create a situation where if the judge finds the defendant qualifies under those standards clearly outlined by the Supreme Court after a due process hearing, that then the sentence is not life imprisonment without possibility of parole, but a sentence of life with possibility of parole... [LB44]

SENATOR GLOOR: One minute. [LB44]

SENATOR SCHUMACHER: ...upon certain conditions. That meets the criteria of the court. I can see easily that a 19-year-old can argue, hey, in Nebraska I can't even drink beer; I can't even enter into a contract until I'm 19, an 18-year-old could argue that; I can't play keno until I'm 19; I'm a child. Or 21, I can't drink until I'm 21 because they say my brain isn't completely developed and I can't handle the booze. By setting an arbitrary date of 18, if you're 17 and 364, you get a special treatment, and if you're 18, you're done, even though your brain is only one day older, I think we're inviting ourselves to a lot of arguments. All we have to do is open up a possibility of parole in those cases where a judge sentencing finds that the individual meets the criteria of the Supreme Court. We do not have to try to second guess what a minimum sentence should be. These are... [LB44]

SENATOR GLOOR: Time, Senator. [LB44]

SENATOR SCHUMACHER: Thank you. [LB44]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Coash, you're recognized. [LB44]

SENATOR COASH: Thank you, Mr. President. During the debate, a question was posed to me which made me think through this is, well, what's the difference between 30 and 60 other than the easy mathematical equation which is 30 and how does that play into this discussion? Why is it important to go to 60? Why is it important to stay to 30? Well, I want you to think about two cases. I'll use an example to illustrate my point: you've got one juvenile who in cold blood murders somebody; plans it out, executes it, maybe does it in a particularly heinous way. Then you've got another juvenile; and the first juvenile is 17, give him an age; then you've got another juvenile who is 14. That juvenile is talked into doing something by a gang and decides to commit a murder under gang peer pressure. Under FA53 both of those juveniles are treated the same. Now

what the Judiciary would tell you is that they prefer and we are best served when we can treat those two juveniles differently. But the 17-year-old who commits murder in cold blood and the 14-year-old who commits murder under peer pressure both get 60 to life under FA53. But under the committee amendment, the juvenile who commits murder in cold blood will probably get 60 to life, and the juvenile who got talked into committing murder may get 35, 40 to life, maybe...at least 30. That's why it's important to have a large range. That allows the judge to look at the cases. If we adopt FA53 and it's 60 across the board, there's not a lot of room for determining how those two children are treated under the eyes of the law. And it allows the judiciary to administer justice, which is what we want. I also want to share with you, because we talk about this all the time, comes up in committee hearings, comes up on the floor, comes up in discussions, well okay, what's going on in other states. Are we getting tougher? Are we going to be the toughest in the nation? Are we going to be the most lenient in the nation? Where are we? Now there's only been a handful of states that have addressed this in their law since the Supreme Court has come out, but I'm going to read to you those states and where they landed with their minimum sentences. And there was a good question posed earlier which was, does that include a mandatory minimum. And I don't know the answer to that, but I will come back when I find that answer. California, depending on the age of the offender, went to 15, 20, and 25. We're at 30. North Carolina went to 25. We're at 30. Wyoming went to 25. Oh, by the way, these are all 25 or 15 or 20 to life... [LB44]

SENATOR GLOOR: One minute. [LB44]

SENATOR COASH: ...so the bottom. In Wyoming it was 25 to life; Utah, 25 to life. Pennsylvania is the only one who has a higher minimum and they're at 35; they're currently in litigation. The state of Pennsylvania may win that. They may not. That's for their court to decide. But again, colleagues, let's not move this discussion to a discussion about...well, let me just say this. Let's move this...let's talk about judicial discretion and let's ask ourselves if we want the judges to be able to look at a case and say, you know what, that guy did something pretty heinous, let's give him a long sentence. He's got to do some time, he killed somebody. [LB44]

SENATOR GLOOR: Time, Senator. [LB44]

SENATOR COASH: Thank you, Mr. President. [LB44]

SENATOR GLOOR: Thank you, Senator Coash. Senator McCoy, you are recognized. [LB44]

SENATOR McCOY: Thank you, Mr. President and members. Would Senator Coash yield to a question? [LB44]

SENATOR GLOOR: Senator Coash, would you yield? [LB44]

SENATOR COASH: Yes, I will. [LB44]

SENATOR McCOY: Thank you, Senator. I'm interested and intrigued to continue your line of questioning because it goes to a question I was going to pose, but I'll pose it to you. Well, if that's the case, why don't we just get rid of all of the mandatory minimums we have in statute because we've got a lot of them? And as a legislature, we have previous legislatures, of which you and I have been a part of now for four and a half years, previous legislatures and legislators have imposed the will of the Legislature a number of times in statute, many, many times, actually, in mandatory minimums, why don't we get rid of them all if that's the case? We want it to be just judicial discretion, why don't we just get rid of them all? [LB44]

SENATOR COASH: Thank you, Senator McCoy. Here's how I would answer that. We as a member of the...as members of the Legislature have a responsibility to serve the interests of justice and to give the court direction to that end. We have to represent the people of Nebraska to say...to find a balance. And the balance has to be between...and the Supreme Court said this too, the balance has to be between how much time do you have to do to serve justice, and that's a minimum? How many years do you have to sit away from your community and society in order for the interest of justice to be served? And I think that's the prerogative of this body...this branch of government. And that's why I see that we find ourselves putting into statute minimums so that we can serve that need. Does that make sense? [LB44]

SENATOR McCOY: Well, it does. I'm just trying to understand why...how that doesn't become an arbitrary designation between what we want to say, while on this particular offense we want to impose because we believe it to rise to a certain level socially, culturally, whatever the case may be, and we want a mandatory minimum here. But over here we want to say, we're going to leave it up to a judge. Where is the consistency there? [LB44]

SENATOR COASH: Well, Senator McCoy, I think we have to take those crimes as they come and here's how I would answer that. I think the Legislature and the people who sent us here expect us to say, you know, killing is killing. And no matter the circumstance of how someone else's life ended, a death is a death and you have to pay for that. And how much you have to pay for that that is up to us, that's where the minimum comes in. And then after that, you've got to have some room to say the manner of death, the circumstances of death and how will that play into the sense of justice that...and, frankly, community safety too. We also have...not only are we administering justice through these sentencing schemes, we have to keep in mind, are we afraid of you? And if that's the case, we've got to put you behind bars for a certain amount of time in order to keep the community safe. [LB44]

SENATOR McCOY: Well, I appreciate that, Senator Coash. I just go back to, well, we're talking about here with 30 years, which with good time could be 15, is less as a mandatory minimum than a number of other offenses that we have, that we have as the Legislature have put into place mandatory minimums. We're talking about murder here. I'm having a hard time understanding why we would set this at 30 years with potentially 15... [LB44]

SENATOR GLOOR: One minute. [LB44]

SENATOR McCOY: ...Thank you, Mr. President...when that's less than what could be perceived, I guess, common-sense-wise is less than the sentence for some what seems to be...they're all heinous crimes, but I just don't understand the consistency. Why would we not at least set this to where it would equal to what our...maybe our greatest mandatory minimum which is from my understanding, 25 years. Why at least wouldn't we have set it to that? Can you help me understand that in the brief time we have left? [LB44]

SENATOR COASH: I'll try, Senator McCoy. (Laugh) We've got mandatory minimums set for...and you're talking about different sets of crimes which were...those were debated on the merits of those crimes. And you're talking about crimes that may be less heinous than what we're debating here. [LB44]

SENATOR GLOOR: Time, Senators. Thank you, Senator McCoy, Senator Coash. The Chair recognizes Senator Nelson. [LB44]

SENATOR NELSON: Thank you, Mr. President. Members of the body, Senator Ashford said that as far as he was concerned 60 years, as set out in FA53 to AM151 was beyond the pale. When we're talking about 60 years there, we're actually talking about 30 with good time. And I suppose it's a judgment call, but I'd like to bring to your attention, and this goes to what Senator Coash was saying, we need to have a range. We're talking here, basically, if we're going to go with 30, we're talking about 15 years. I want to read in part from the transcript of testimony by a senator in 2011 regarding Senator Council's proposal to give juveniles convicted of first-degree murder an opportunity to prove to the Parole Board after 20 years served that they've been rehabilitated. And this senator said, I think all of you here know me as the person who is a kind, generous person, who if you need my help I'll try to be there for you. But let me tell you about three youth who were engaged in a gang activity, in an initiation, and how they went on a killing spree; and I'll just skip over some of this, the facts are that there was a man in his driveway in south Omaha, had no contact with him, but they shot him. They also went to an ATM in Dundee and randomly shot a person taking out money. Fortunately, neither of those persons died. But then to me the most horrific of all is when they went over to about 54th and Leavenworth. On the corner in a Kwik Shop with gas

stations and it's getting pretty late at night, it's one girl in the Kwik Shop by herself running the register and she's getting ready to lock up. She closes the shop, walks toward her car, she has no money. She's barely older than they are. They surround the car. One pulls her out; they drag her to the alley and then shoot her point blank. When the time comes that her family can come to us and petition to get their family member back, that's the time I'll listen to a bill like this and be supportive. And it doesn't matter how many vigils they hold, it doesn't matter how many monuments or flowers or displays or remembrances that they put up and it doesn't matter how many stories are in the paper about her family and what they're going through, they will never ever have her back. She was very, very young, totally innocent and she went through...I can't even imagine what she went through after they pulled her out of the car. She is the one that we should be considering in this whole issue. Killing is killing and dead is dead. My heart goes out to her family. And I say someone that commits murder, a cold-blooded murder like this no matter how old they are should be facing the consequences. That was Senator Howard testifying. The killer was 15 at the time and there were two other teenagers and I said this was on a gang activity. Well, under the bill as LB44, that 14-year-old could be out in 15 years. That would put him at about...between 35 and 40, I guess. He might have been sentenced, certainly, to a longer time, but we can't count on that considering all the issues and all the characteristics that the court has said that we have to look at. The court itself said on page 17: we think appropriate occasions for sentencing...this is the Miller case, for sentencing juveniles to this harshest possible penalty will be uncommon. That is especially so because of the great... [LB44]

SENATOR GLOOR: One minute. [LB44]

SENATOR NELSON: ...difficulty we noted in Roper and Graham of distinguishing at this early age between the juvenile offender whose crime reflects unfortunate, yet transient immaturity and the rare juvenile offender whose crime reflects irreparable corruption. Although we don't foreclose a sentence's ability to make that judgment, we require that it take into account how children are different and how these differences counsel against irrevocably sentence them to a lifetime in prison. We can still sentence them to a lifetime in prison, we just have to give an option here to the court. Now the question is, is it going to be 15 years in the majority of cases, or is it going to be a minimum of 30? So that's what we're considering here. I think if we're not going to do a mandatory minimum at 60, and we're really then talking about 30, 30 is a more appropriate sentence for a juvenile, even though they're 14 years of age. Thank you, Mr. President. [LB44]

SENATOR GLOOR: Thank you, Senator Nelson. Senator Schumacher, you are recognized and this is your third time, Senator. [LB44]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. It occurs to me that one of the scenarios that's been laid out, which kind of pangs at the heart

strings is the one where the poor kid gets in with a not-so-good buddy and they decide they're going to take this shiny, new, red Mercedes convertible for a run. And so they steal the car. That's a felony. Along the way they get thirsty. And the not-so-good kid goes into a 7-Eleven-type convenience store and proceeds to rob the place of some soda or something else and gets into an altercation with the person behind the counter and somewhere or another a gun comes out and the person behind the counter is killed. And the poor kid sitting in the car just wanting to go for a ride in the fancy red car is suddenly finding himself in a situation of first-degree murder and looking at life imprisonment without parole. Here's what really would happen in that scenario. Would it be easy to figure out the situation that the kid in the car had nothing to do with it? He, most likely, would be offered a minor offense and encouraged to testify against the other kid and say what he saw as he watched the individual in the store getting shot by the other kid and he would never be in the predicament. The system is designed to work that way so that someone who is, basically, perfectly innocent is not going to find themselves convicted for just happening to be in the wrong place at the wrong time and in a kind of juvenile setting. We are looking at a situation here where if we make the minimum too low, or do not require a minimum...a mandatory minimum of sorts, that we are creating situations where we're going to see time and time again defense counsel using this statute to say, look, we are entitled to a special deal, or defendants who aren't qualified under this claiming that they are being discriminated against because we cannot give us and we have yet to hear a rational reason why 18 is different from 17 and 364 days. But we arbitrarily have put that down, even though the court doesn't say so, and we'd have a hard time explaining how we don't permit people to contract until they're 19 and drink until they're 21, but somehow they are subject to a life sentence if they happen to be 18. We are creating a lot of litigation with this particular approach. And I'm becoming perfectly convinced that the court is not telling us that we have to set a minimum alternative number of years. What the court is telling us is there's got to be an escape hatch for a juvenile who is found to be too "juvenilish" to have the responsibility of a life sentence put on top of them. And that comes in, and it seems pretty clear from the Opinion, in creating a possibility of parole or special parole rules or special sentencing procedures in order to have an escape hatch from the "without parole" requirement. That's what gave the court the heartburn, not that there wasn't some minimum number of years specified. It was their "was no escape hatch." And I think, appropriately, this should go back to the committee to come up and to work out the language, and I don't...I doubt if we can do it on the floor, possibility we could, of an escape hatch on those cases where the defendant is a juvenile... [LB44]

SENATOR GLOOR: One minute. [LB44]

SENATOR SCHUMACHER: ...based upon the characteristics of the case and not, necessarily, an arbitrary age. And that the consequence would be a special sentencing or special parole proceeding for those people that provided an escape hatch from the mandatory sentence without possibility of parole. Thank you. [LB44]

SENATOR GLOOR: Thank you, Senator Schumacher. Senator Pirsch, you are recognized. [LB44]

SENATOR PIRSCH: Thank you, Mr. President, members of the body. I wonder if Senator Coash is...I wonder if he would yield for a question if he's near the mike. Why don't I comment on the...looks like Senator Coash is not immediately available by the mike, but I will...I just want to make sure that I draw a clear distinction in what I thought I heard him say, or may have said, that we are somewhat comparable, maybe, in terms of the way this bill is structured with the six other states that have passed laws, I guess, in this area. And, you know, from my...kind of speaking with individuals who are in the know, it seems as though we're not necessarily comparing apples to apples in this respect that in this bill the 30 years does not mean that the individual is not eligible for parole in half that time, so it would be 15 years. It's my understanding that, at least in some of the other states, speaking with some of the county attorneys, that these sentences of 25, 35, etcetera, are not ones...they're essentially mandatory minimums, so you'll be serving without the possibility of parole in half the time in those states. And so I just want to make sure that we're all on the same page here comparing apples to apples as we discuss what is...it seems just kind of a beginning as far as states' responses to this Supreme Court case that came down this past summer. Thank you. [LB44]

SENATOR GLOOR: Thank you, Senator Pirsch. Senators remaining in the queue: Schilz, Bloomfield, and Karpisek. Senator Schilz, you are recognized. [LB44]

SENATOR SCHILZ: Thank you, Mr. President, members of the body. I know we've gone on quite awhile here today for a good reason. This is an issue that we have to solve; this is an issue that we have to bring resolution to because we have a Supreme Court case that's out there that tells us that the way we have it right now isn't correct. I can't tell you from sitting where I'm at now what the right direction will be. But at least when you talk about the floor amendment and looking at an amount of time to make sure that people that commit these crimes have the punishment that fits that, I think it's exactly essential that we talk about that and that we understand it. You know as I talked before on the mike, we...I looked at the definition of first-degree murder and I saw that. And I think that goes straight to the point, we're not talking about kids that are stealing candy from the candy store, these are...these are big-time crimes, big-time atrocities that are going on. So it is right that we take this much time on this, that we understand it. And then that we make a vote that...or that we take a vote so that we know where we're at, so the people of the state of Nebraska, those folks that are defendants, those folks that have been accused of crimes have the opportunity to make sure that they're being treated as they should be. So once again, I'm still sitting here listening. I will continue to do so. I tend to agree with FA53 and I'm probably going plan on voting for that. And with that I'd give the rest of my time to Senator McCoy if he'd like it. [LB44]

SENATOR GLOOR: Senator McCoy, 2 minutes, 50 seconds, Senator. [LB44]

SENATOR McCOY: Thank you, Mr. President. I, too, was going to ask Senator Coash a question, but he's not here at the moment, so I'll ask Senator Ashford if he'd yield. Senator Ashford, yield, please. [LB44]

SENATOR GLOOR: Senator Ashford, would you yield? [LB44]

SENATOR ASHFORD: Yes, I will...shall. [LB44]

SENATOR McCOY: Thank you, Senator. Are there a number of places in statute where we have put mandatory minimums for different offenses? [LB44]

SENATOR ASHFORD: Yes. [LB44]

SENATOR McCOY: Do those include juvenile as well? [LB44]

SENATOR ASHFORD: Certainly...certainly if a...sure, if a juvenile commits a felony that we've determined to be...have a mandatory minimum sentence of let's say 5 to 20, which we've done in some of the gun crimes, then the juvenile would be susceptible to that mandatory minimum if they're tried as an adult and if they're convicted of that particular crime. [LB44]

SENATOR McCOY: So what would be...so that would have been in the Legislature exerting its will... [LB44]

SENATOR ASHFORD: Correct. [LB44]

SENATOR McCOY: ...in the...as a directive to the judiciary... [LB44]

SENATOR ASHFORD: Correct. [LB44]

SENATOR McCOY: ...in regards to that, right? [LB44]

SENATOR ASHFORD: Right. And I'm not saying that's a bad decision. I'm just...yes, we have done that. The difference here is we're looking at 30 to life, we're looking at 30 to life as the sentence. [LB44]

SENATOR McCOY: Which can mean 15, as we've talked about, with good time, correct? [LB44]

SENATOR ASHFORD: It can mean 15, but it's going to be very...15 when they're

eligible for parole. But in all likelihood, they're going to get a sentence of...very rarely do they...is someone going to be sentenced to 30 years; it's going to be 30 to 50, 30 to life. If it's 30 to life, then they may be eligible... [LB44]

SENATOR GLOOR: One minute. [LB44]

SENATOR ASHFORD: ...for parole, but they...there is no...they don't get out, there is no jam date; they could serve life in...the whole...the point is, that this sentencing regimen for juveniles is...does not have a mandatory minimum except that it has a span of years. So 30 to life means that at...there's a mandatory minimum, in a sense, of 15, they'd be eligible for parole at 15, but there's no guarantee they'd get parole and there's no jam date until...there is no jam date because life is the...is an indeterminate amount of years. [LB44]

SENATOR McCOY: How have past legislatures determined what those mandatory minimums for juveniles have been? [LB44]

SENATOR ASHFORD: Well, we made gun crimes...we increased the sentences for gun crimes, essentially, in LB63, and you were here, we...the Legislature did that. And so we did that as a reaction to gun violence, I believe, and other issues. [LB44]

SENATOR GLOOR: Time, Senators. Thank you, Senator Ashford, Senator McCoy. Senator Bloomfield, you are recognized. [LB44]

SENATOR BLOOMFIELD: Thank you, Mr. President. I've been sitting up here listening, or across the hall listening, I don't know, this...the possibility of them walking within 15 years seems awfully quick to me. And I think 60 years, which will bring it down to 30, might seem a little long. It would seem to me like we're crying out here for a meeting of the minds and I don't know, hopefully, that's happening somewhere that we can split the difference on that. I would think that if somebody served 20, 25 years would be better than the 15. But with that I would yield the rest of my time to Senator Schumacher. [LB44]

SENATOR GLOOR: Senator Schumacher, 4 minutes, 14 seconds. [LB44]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. Would Senator Ashford yield to some questions? [LB44]

SENATOR GLOOR: Senator Ashford, would you yield? [LB44]

SENATOR ASHFORD: Yes. [LB44]

SENATOR SCHUMACHER: Senator Ashford, is anywhere in the Supreme Court

decision it tell us that if we use the number 18 we're safe? [LB44]

SENATOR ASHFORD: No, but it was in the prior case...two cases, the Graham case talked about below 18, or younger than 18. They didn't address it...it was not addressed in Miller. [LB44]

SENATOR SCHUMACHER: And so the picking of 18 is a fairly arbitrary wager on our part that they'll support 18 rather than 19. [LB44]

SENATOR ASHFORD: Well, I think they made it pretty clear in Graham that it's...that it was younger than 18. So, I mean we could pick 19, but I...but, quite frankly, they probably didn't feel a need to do it because the juvenile in this case was under...I can't recall the age, I think 17...14, I'm sorry. [LB44]

SENATOR SCHUMACHER: And, Senator, is the only way to fix the problem and come into compliance with the court to create a lower minimum sentence than life, is that the only way to fix it? [LB44]

SENATOR ASHFORD: The other way you could potentially do it is having an automatic review process, and some states are looking at that where you'd have a review at every 10 years or at the...there are other ways to do it, Senator Schumacher. One of them would be a 14-year-old could have their case reviewed 5 years, 10 years, whatever it is; if it's a 17-year-old, their case could be reviewed in 25...there are...I'm sure there are other...well, I know there are other ways you could do it. [LB44]

SENATOR SCHUMACHER: And among them might be at sentencing for a judge to consider whether the juvenile is too immature; and if he makes that finding... [LB44]

SENATOR ASHFORD: Right. [LB44]

SENATOR SCHUMACHER: ...another set of rules; or if he makes that finding, the Parole Board down the road uses another set of rules. So what is the comparative advantage to what we're doing here? [LB44]

SENATOR ASHFORD: Because...and we can always...we can...we can make whatever changes going forward. We're changing sentencing for juveniles here. And so it can be changed as we move forward and we get experience. But the reason we are...I presented this bill...we have, the committee to the Legislature is what, I believe, to be a...I'm not going to be...overstate it, but a relatively clear stricture that says you have to have...when you're dealing...and I realize we may disagree on this, but we have to have a system in place for juveniles for 1A felonies that provides an opportunity for early release. That's what I think the case says. Now there may be other things to do, other than minimum sentences, yes. I mean I don't disagree with you that it...and that hasn't

been tested yet. [LB44]

SENATOR SCHUMACHER: And in fact, your original bill was quite simple, even though it didn't specify what the number of years were, I think there were some "Xs" in there, left that open, it was just a basic creation of a alternative sentence of types... [LB44]

SENATOR ASHFORD: Right. [LB44]

SENATOR SCHUMACHER: ...and now we've gotten to the "30" number. [LB44]

SENATOR ASHFORD: Right. [LB44]

SENATOR SCHUMACHER: And we're debating whether or not the "30" number is the smart number... [LB44]

SENATOR GLOOR: One minute. [LB44]

SENATOR ASHFORD: Right. [LB44]

SENATOR SCHUMACHER: ...or if there is another smart number. [LB44]

SENATOR ASHFORD: That's exactly where we are, Senator Schumacher. [LB44]

SENATOR SCHUMACHER: Do you see that, for example, in a second offense, first-degree rape, we require a minimum of 25 years? Was that unreasonable to say that murder should be no less than that? [LB44]

SENATOR ASHFORD: I don't want to not answer your question; my answer is that we've given such a broad span of years from 30 to life that..and where the judge, if the judge feels it appropriate can give a life sentence, that I...that it is not necessarily analogous, because...to that particular crime. But I agree with you. You can find sentences that exceed 30 years or 15 years, I get that. But I think what we've done here by giving... [LB44]

SENATOR GLOOR: Time, Senators. [LB44]

SENATOR SCHUMACHER: Thank you. [LB44]

SENATOR GLOOR: Thank you, Senator Bloomfield, Schumacher and Ashford. Senators wishing to speak: Karpisek, Lathrop, Brasch, Schilz, Bloomfield, and Davis. Senator Karpisek, you are recognized. [LB44]

SENATOR KARPISEK: Thank you, Mr. President, members of the body. I've tried to

keep myself in my seat today as we talk about this, because it is a tough one to talk about. But these are the days that you tend to remember from a session and there's been very good points on each side and I'd have to say that I've learned a lot. But I may be more confused at other times, too, than when we started. Would Senator Ashford yield? [LB44]

SENATOR GLOOR: Senator Ashford, would you yield? [LB44]

SENATOR ASHFORD: Yes, I would. [LB44]

SENATOR KARPISEK: Thank you, Senator Ashford. We've been talking about the two kids, even the twins, and one is the get-away driver, but he doesn't even know it, the other kid is the shooter. Is there something now that would say that the person who didn't even know, but was involved, would not get the same amount of sentencing as the shooter? [LB44]

SENATOR ASHFORD: It's not required that they get the same sentence; they'd be eligible for the same sentence. [LB44]

SENATOR KARPISEK: And so then that would go with the mitigating factors, correct? [LB44]

SENATOR ASHFORD: Correct. [LB44]

SENATOR KARPISEK: Thank you. Trying to learn a little bit of "lawyerese" I guess over these years. But I think I keep hearing a lot of times brought up that they could get the same sentence, and that's true too? [LB44]

SENATOR ASHFORD: Correct. [LB44]

SENATOR KARPISEK: And that's just a judge's decision? [LB44]

SENATOR ASHFORD: Correct. Well, well, I think it's a series of decisions that start with the prosecutor, the jury, the probation department, the judge, and then the appeals court, but yeah, technically yes. [LB44]

SENATOR KARPISEK: So if it is a jury, which...would these all be jury cases? [LB44]

SENATOR ASHFORD: They wouldn't have to be. [LB44]

SENATOR KARPISEK: Not necessarily, okay. But if it is a jury case and...would the jury...who would decide the penalty? [LB44]

SENATOR ASHFORD: The judge. It's different from the capital case where...involving an adult where the jury has a part to play in the sentence. That would not be the case then. [LB44]

SENATOR KARPISEK: So the jury would just be guilty or not guilty? [LB44]

SENATOR ASHFORD: Finder of guilt, right. [LB44]

SENATOR KARPISEK: Okay, so they wouldn't even know what type of sentence they were looking at. [LB44]

SENATOR ASHFORD: Correct. [LB44]

SENATOR KARPISEK: That's interesting. Thank you. I'll keep trying to ask questions that we...as we've gone through. But I think that's the major hang-up here is that...or one of the main issues is could they both get the same thing when one...and again that is true. [LB44]

SENATOR ASHFORD: Yes. And they do now. [LB44]

SENATOR KARPISEK: They do, yes. But if we...as we move on, now with the floor amendment, would that change? [LB44]

SENATOR ASHFORD: The floor amendment, if you adopt the floor amendment of 60 to life, then it's...you're providing the judge some leeway in the sentence for one or both of those defendants. [LB44]

SENATOR KARPISEK: Thank you. And it's really not fair to ask you about the floor amendment since it's not yours, but I appreciate that. Thank you, Senator Ashford. (Microphone malfunction.) That's good, thank you. (Laughter) [LB44]

SENATOR GLOOR: Thank you, Senator Karpisek. Senator Lathrop, you are recognized. [LB44]

SENATOR LATHROP: Question. [LB44]

SENATOR GLOOR: Do I see five hands? I do. Question is, shall debate cease? All in favor vote aye; those opposed vote nay. Senator Ashford, for what purpose do you rise? [LB44]

SENATOR ASHFORD: Thank you, Mr. President. I'd ask for a roll call vote...call of the house, roll call vote. [LB44]

SENATOR GLOOR: There's been a request to place the house under call. The question is, shall the house go under call? Those in favor vote aye; those opposed vote nay. Record, Mr. Clerk. [LB44]

CLERK: 36 ayes, 0 nays to place the house under call, Mr. President. [LB44]

SENATOR GLOOR: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, I'd ask you to please leave the floor. The house is under call. Senators Avery, Conrad, Mello, please return to the Chamber and record your presence. Senator Avery, how do you wish to proceed? Ashford, I'm sorry; how do you wish to proceed? [LB44]

SENATOR ASHFORD: (Inaudible). [LB44]

SENATOR GLOOR: Roll call vote, regular order? Members, the questions is: shall debate cease? Mr. Clerk, please call the roll. [LB44]

CLERK: (Roll call vote taken, Legislative Journal page 941-942.) 26 ayes, 18 nays to cease debate, Mr. President. [LB44]

SENATOR GLOOR: Debate does cease. Senator McCoy, you're recognized to close. [LB44]

SENATOR McCOY: Thank you, Mr. President and members. You can see from that vote, I think there are a good number of members across the floor that are not ready to have debate fully cease on this issue. But we're going to go to a vote which is fine, it's the will of the body. I would make mention of the fact that through dialogue that some of you were here or may have been listening to, I think it's apparent that when we talk about mandatory minimums or the years that we're talking about, it may be more of an arbitrary process than what one may think for how those numbers are arrived at, including the list that Senator Coash brought to us from other states. And you can see the wide-ranging year differences for juvenile sentencing. Probably what has been lacking from this discussion today, and I'm not going to get into it, is just the heinous nature of some of these crimes. And they're not any less heinous if it's an adult committing them or if it's a juvenile committing them. But it is a loss of life of our citizens which marks the seriousness of this discussion today. Somebody said earlier today, maybe it was Senator Lautenbaugh, I can't recall, there's really no room for levity in a discussion like this. And I would agree with that, one way or the other. I appreciate, as I said earlier, what the Judiciary Committee has done, the enormous amount of work they put into this issue. I, however, just like you, am one of 49. And while I respect what they've worked on, I don't believe this bill to be a finished product. I daresay there's others who feel the same way, otherwise we wouldn't had a vote to cease debate, we

just did. So whether this conversation continues yet in our remaining few minutes today or whether in a future day whether it's tomorrow, or the determination of the Speaker, whenever it is I would imagine we're not done talking about this particular aspect of AM151 or LB44 because of the serious nature of it. I think we can give judicial discretion with changing this to 60 years which can mean 30 years with good time, but also signals to citizens across Nebraska we take this very, very seriously when there's a loss of life involved. That's why I bring this floor amendment to you. And with that I would close, Mr. President. [LB44]

SENATOR GLOOR: Thank you, Senator McCoy. Members, the question is, shall the amendment to the committee amendment to LB44 be adopted? Those in favor vote aye; those opposed vote nay. Have all voted who wish to? Senator McCoy, for what purpose do you rise? [LB44]

SENATOR McCOY: Mr. President, I request a roll call vote in reverse order, please. [LB44]

SENATOR GLOOR: Request has been made for a roll call vote, reverse order. Mr. Clerk. [LB44]

CLERK: (Roll call vote taken, Legislative Journal page 942.) 21 ayes, 23 nays, Mr. President, on the amendment. [LB44]

SENATOR GLOOR: The amendment fails. Mr. Clerk. Raise the call. [LB44]

CLERK: Mr. President, Senator McCoy would move to amend the committee amendments with AM...I'm sorry, Senator Schumacher, excuse me, Senator; Senator Schumacher would move to amend with AM950. (Legislative Journal page 942.) [LB44]

SENATOR GLOOR: Senator Schumacher, you're recognized to open on your amendment to the committee amendment. [LB44]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. This is a very simple amendment and it strikes the word "mitigating" at the beginning of line 14 on page 1. Just to put this all in proper context, so far we've started out with the bill that basically said we're going to...in addition to the life sentence, give the judge a chance to give a sentence of a term of years. And the initial bill was uncertain as to what that term of years should be. The proposal coming out of committee filled in the blank in the initial bill with 30 years. We just voted down a motion, but not by many votes, that would have said 60 years implying that the right number is somewhere between 30 and 60 in order to get this done if we're going to use the option of complying with the Supreme Court decision by giving the court an option to use a term of years instead. Now that being said, in determining if he's going to use a term of years, the district judge, he or she, is

going to have to go through a procedure to decide whether or not to use the option of something less than a life sentence. And the cookbook that has been given to us in AM151 says this: in determining the sentence of a convicted person under subsection (1) of this section, the court shall consider mitigating factors which led to the commission of the offense. The convicted person may submit mitigating factors to the court including, but not limited to, and then there's a list of things, some of which come from the Opinion, and a lot of things in the Opinion are just simply left out for some reason. But this looks like in that first sentence that we somehow are stacking the deck in favor of mitigation: a court shall consider mitigating factors which led to the commission of the offense. What this amendment does is strike the word "mitigating" so that it reads: the court shall consider factors which led to the commission of the offense, giving a level playing field to the prosecutors and the defense attorneys and the defendant and the victims to argue what factors the judge should take into account; what factors he should put on the scale when deciding life or something less than life imprisonment. This is in compliance with the Supreme Court decision which says that the defendant has got to be allowed to submit some mitigating circumstances because the next sentence takes care of that, the convicted person can submit mitigating circumstances; even though for some reason it doesn't list out all the mitigating circumstances that the Supreme Court says should be considered. This amendment simply creates a level playing field between prosecutor and defense, victim and convicted. And it says the court considers all factors, giving the court a clear indication that this legislative body is not going to try to prejudge whether they should use life sentence or use the term of years. It's a simple amendment, but it is an important word that does not need to be there unless we intend it to mean something. And the only thing we could intend it to mean is that we favor lighter sentences. And I don't think that's the case within the body. So this amendment, very simple, very straightforward, strikes a unneeded word and a word which contributes nothing to the procedure from the procedure that we're requiring the district judge to follow in determining whether or not he should stick with the life sentence or use whatever minimum sentence that we put in the statute after this particular debate, assuming we don't find a better way to do this with some type of parole hearing that's to be had in those cases where the defendant isn't mature enough to make the proper judgments and needs to have a special treatment as a juvenile. Very simple amendment, equal level playing field, defendant, prosecutor, victim, convicted. Thank you, Mr. President. [LB44]

SENATOR GLOOR: Thank you, Senator Schumacher. Mr. Clerk. [LB44]

CLERK: Mr. President, I have some items. Enrollment and Review reports LB6A as correctly engrossed. Amendments to be printed, Senator Campbell, to LB269; Senator McCoy to LB44. [LB6A LB269 LB44]

I do have a priority motion. Senator Mello would move to adjourn the body until Tuesday morning, April 9, at 9:00 a.m.

SENATOR GLOOR: Members, you have heard the motion to adjourn until tomorrow morning at 9:00 a.m. Those in favor say aye. Those opposed say nay. We stand adjourned.