

Journal.)

SPEAKER BAACK: Senator Hohenstein.

SENATOR HOHENSTEIN: Mr. Speaker, members of the body, I apologize. I thought I had filed this amendment, and it is now being distributed around. I talked to Senator Hall about it earlier. I guess I was not privy or part of the compromise, and I have two specific concerns with the language of the bill. One is I think relatively minor. What the amendment would do, if you look on the green copy of the bill on page 3, the first thing that it would do would change the language "clear and convincing evidence" and that's the standard of proof that Senator Hall has discussed. It would change that to relevant evidence and that's the standard presently employed, relevant evidence. The second thing that it would do would be insert a word on the very last full line of that bill. "Such proof shall be made outside the presence of any jury." What it would say is, "Such proof shall first be made outside the presence of any jury." The point behind the amendment is relatively simply. I agree with the concept that the other bad acts language ought to be made outside the presence of a jury first. There's a potential problem if this evidence is made in front of a jury, and I think the idea of having an in limine hearing or some sort of a hearing prior to bringing this evidence before a jury is a good idea, and I support that concept. I just wanted to make sure, and by inserting the language "first" make sure that if, in fact, there was an admissibility question that that would be made in an in limine hearing and if, in fact, it was admissible, it is clear that that also can be made in front of a jury. The second part of the amendment, which is actually the first part, which changes the standard of the bill from "clear and convincing" to "relevant evidence" is really more significant, and let me just explain what I think the difference is. Again, as Senator Hall indicated, we are talking about other bad acts, and it's clear in the law that you cannot use other bad acts to prove character. You can't say, well, if this guy was a child molester ten years ago, he wasn't convicted but he did this ten years ago, that automatically means that he is one now. That's not what the law says. However, the law does allow you to use prior bad acts to show certain parts of a case, such as a plan or a motive or intent. Now the bill, this bill does change the standard of proof for use of that evidence. It changes the standard of proof from the present law, which is relevant evidence to clear and convincing evidence, and the reason that