

going to, in fact, change one, I think in fairness we probably ought to be taking a look at the other one. So I would ask you to keep that in mind. I do oppose this portion of the Hohenstein amendment for that reason, and because I think it so significantly reduces the value or the ability to try to keep this type of evidence out that the bill almost becomes innocuous.

SPEAKER BAACK: Thank you, Senator Lindsay. Senator Bromm.

SENATOR BROMM: Mr. Speaker, I would ask Senator Hohenstein if he would respond to a question please.

SENATOR HOHENSTEIN: Yes, I will.

SENATOR BROMM: Senator Hohenstein, under your amendment, if the evidence is presented to the court to determine whether or not it should be related to the jury, what would be the standard that the court would apply as to whether or not it should be able to be used or not? Would it be...would he have to convince the judge by the preponderance of the evidence, or...?

SENATOR HOHENSTEIN: The standard would be relevant evidence, the standard which is currently employed by the courts today to determine whether that evidence is admissible.

SENATOR BROMM: So it wouldn't necessarily have to be beyond a reasonable doubt or it could be something less than a reasonable doubt?

SENATOR HOHENSTEIN: Well, the whole...not every item of evidence presented in a case singularly is beyond a reasonable doubt. Accumulation of the evidence, obviously, would be beyond a reasonable doubt. But, no, this particular piece of evidence, this particular item of evidence, as the current law is, is relevant. That's what the standard is right now, and the court would have to determine whether that evidence is relevant. And I think they look at, when you look at relevant evidence, you look at determination of a lot of factors, whether it is remote, whether it relates to the offense, whether the prejudice outweighs its probative value. Those are the things that the court would have to determine first to let it go to the jury, and there would have to be a determination before any other factors would come into play. If the court determined that, yes, it's probative value outweighed it's possible prejudice,