

SENATOR NICHOL: Yes. Mr. President, members of the Legislature, LB 402 was introduced at the request of the Attorney General, Paul Douglas. Under existing law the prosecution cannot appeal a criminal sentence on the ground that it is too lenient. In our State Supreme Court in a recent decision based on a federal statute determined that it is not constitutionally prohibitive to allow the state to appeal a criminal sentence. Bear in mind, we are not talking about appealing an acquittal. That would obviously be double jeopardy. What we are talking about is allowing the state to appeal a sentence given after a criminal conviction if the prosecutor with the concurrence of the Attorney General feels that the sentence given by the trial court was too lenient. The committee amendments provide standards for the Supreme Court to consider in determining whether the sentence imposed by the trial court is excessively lenient. The committee amendments also spell out the alternatives the Supreme Court can take upon making that determination. Once again I would mention that I introduced the bill at the request of the Attorney General, Paul Douglas. It is a policy issue as to whether we want the prosecutors in this state to have this authority. The Judiciary Committee brings it to the floor for your consideration. I move for the advancement of LB 402 as amended.

SPEAKER MARVEL: Senator Vard Johnson, your light is on.

SENATOR V. JOHNSON: Mr. Speaker, members of the body, I rise in opposition to this bill because I think this bill is a premature bill. I don't have any true misgiving about the county attorney having the ability to appeal a lenient sentence to the Nebraska Supreme Court for a review of the sentence to determine whether or not the sentence should be enlarged. After all, a defendant has the same opportunity of affecting an appeal to the Nebraska Supreme Court to determine whether or not the sentence was excessive. But the problem I have is that you and I have never really established in this Legislature true sentencing criteria. We don't really have any base lines to look at to determine whether a sentence is excessive or is lenient. Now this bill for the first time articulates a few standards that appear to deal with leniency of a sentence, that is the court is to look at the nature and circumstances of the offense. Now in relation to what? In relation to other offenses? It doesn't say. It says the court is to look at the history and characteristics of the defendant. Now that is done traditionally anyhow through presentence investigation. This court is to look at the need for the sentence imposed. Well, the sentence imposed is the one that supposedly was too lenient. The court is to look at