

I spent a great deal of time reseaching LB 213 and some of the constitutional issues that were raised with regard to the Attorney General's opinion and had been raised previously by Mr. Goc, the counsel to the Judiciary Committee, and they do raise some interesting issues. And, incidentally, one of the reasons that I spent some time researching these matters is that I intend to write a paper on LB 213 and LB 95 and in the process of doing that and so I analyzed the Attorney General's opinions and I looked up the case law that was mentioned in the Attorney General's opinion and did a...looked at some other case law that is important as well, and so I am glad that Senator Nichol raised these points because I think it is important for some of this information to be presented to the Legislature and to be put into the record. Senator Nichol is correct to this extent. He is correct when he says that the the equal protection clause of the United States and the Nebraska State Constitution says that you have to treat people who are in substantially similar situations the same, and if you differentiate between people that are in substantially different situations or substantially similar situations, you have to have a logical reason to distinguish between those individuals. The important, where I think Senator Nichol and John Goc and other people are inaccurate or perhaps where another argument can be made is they rely on several cases to come to the opinion that LB 213 is unconstitutional because LB 213 contains a different standard for committing an individual than does the current Mental Health Commitment Act of the State of Nebraska. The standard is not greatly different but it is different in many ways and the most important reason that it is different is that the standard proposed in LB 213 does not require a recent overt act of dangerousness. It does require an overt act. The opinions that I have seen that would indicate that LB 213 in its current form are wrong or is unconstitutional or constitutionally suspect rely very heavily on the case of Baxstrom vs. Herold. There the United States Supreme Court struck down a New York statute which permitted convicted persons to be committed at the end of their prison terms under a different procedure than those who are committed under New York civil commitment law. Baxstrom can be readily distinguished from the situations which could arise under LB 213 for several reasons. First the New York statute addressed individuals who had been convicted of crimes. Many of those individuals had denied committing the actus reus of the crime and if the crime contained a mens rea element the individual had not challenged his sanity and was therefore presumed to be sane. In a case where the defendant pleads not guilty by reason of insanity, the individual asserts that