

March 10, 1982

LB 568

regarding Municipal Court jurisdictions. Some of the bills would require across the board changes in city charters, criminal law procedures, probation procedures and reversals of years of criminal law precedent. Other provisions of the bill as introduced would cost thousands of dollars to local subdivisions in terms of providing for jail space and costs of jury trials. Other provisions simply wouldn't work. The Judiciary Committee directed its staff to redraft Nebraska's DWI laws integrating the get tough philosophy of other bills introduced in a workable form. We asked the staff rather than attempt to further patch up what we have, to come up with a new system, a system that fits within the system we now have and use that system to work for us rather than against us. I think we have accomplished this with the committee amendments of LB 568. Let me briefly outline the system set up by the committee amendments. First of all, the amendments don't attempt to deform the penalty structure of the criminal code by placing minimums on existing penalty classifications. What the amendments do is establish a class of misdemeanor which provides escalating penalties which apply not depending upon which offense the prosecution charges, but upon the existence of prior convictions. This is a unique approach. It will be litigated. I believe it will be upheld. This approach also will limit plea bargaining, not because we attempt to tell prosecutors not to plea bargain but because we eliminate the prosecutor's options, the opportunity to plea bargain. Rather than charging first, second or felony DWI the prosecutor would file a single charge, a Class W misdemeanor. The outcome would depend upon the existence of prior convictions, not upon which charge the prosecutor decides to bring. By keeping the penalties within the range of existent law we avoid due process problems with escalating penalties depending on prior convictions. We limit the court's discretion, not by trying to tell the courts they can't suspend proceedings and place people on probation or suspend the sentence. Those are the types of decisions we pay judges to make. We limit judicial discretion by telling the courts that if they do suspend proceedings and place the drunk driver on probation or suspend the sentence for any reason, they must as a term of such probation or sentence suspension order that person not to drive and suspend his license for a length of time which again depends upon the existence of prior convictions. When courts do not grant probation, the committee draft provides for a mandatory jail term plus license revocation. We further limit judicial discretion by requiring judges to make a finding on the record as to prior convictions. This provides for oversight.

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