

March 10, 1982

LB 568

that makes the public think that we are really being hard, then pass this bill. But remember this, a prosecutor might be prohibited from plea bargaining if you pass a law that says that but you cannot stop him from bringing a charge other than the one you want him to bring. If somebody drove down the street....

SENATOR CLARK: You have about 30 seconds left.

SENATOR CHAMBERS:and ran into a thousand cars, the prosecutor could charge reckless driving or negligent driving, there is no drinking part of it at all and this person pays the fine for negligent driving and goes. If you have the pre-trial diversion program, something might can be done with this person. I am in favor of Senator Koch's and Kilgarin's amendment.

SENATOR CLARK: Senator Nichol.

SENATOR NICHOL: Mr. Chairman and members of the Legislature, you have forgotten one thing here, one thing. What happens when I go before the judge and I have been caught as a drunk driver? Now I go to the prosecutor not to the judge. The prosecutor says, Nichol, you are a pretty good guy, have a nice family, need to go to work, you are reputable, I am going to put you on probation, I am going to pre-trial divert you. The thing that happens is I am not charged with drunk driving, and as long as I do my little chores I am never charged with drunk driving. I can be charged umpteen number times for drunk driving, it never goes on the record. That is part of your problem. Now if you want an ideal loophole, this is it. Adopt this amendment and you have nothing from here on as long as you can pre-trial divert because you can pre-trial divert in almost any court in the state, and you are going to do exactly what we are trying not to do here and that is get the number of drunk driving charges we are charged with. When you pre-trial divert on drunk driving, I am as guilty as if I go through court, absolutely as guilty, but I avoid the law. This is number one loophole. I urge you to reconsider again. The bill wants to have it remain in the hands of the judge, not the prosecutor. The prosecutor should not be the judge. The judge should be the judge and the prosecutor should not have the liberty to say, Sieck, you are pre-trial diverted; Peterson, you go through court. So we just pick and choose across the state. I don't have any problem with Omaha in case they are doing a perfect job, but that is not going to be the situation across the state. So if you want a great big loophole where I can be drunk time after time, drunk

8663