

March 19, 1982

LB 870

appeared in the Omaha World Herald last Friday one day after 870 was indefinitely postponed. You will find that the survey that was taken dealt with mandatory fine and jail sentences. You will see that on second offense 91 percent of those people polled felt that there should be mandatory jail sentences and fines for these individuals who are convicted of this offense. Additionally, in subsequent offenses, third, etcetera, 86 percent favored this. So, ladies and gentlemen, I would ask that you join me in reconsidering our action on LB 870 so we might properly address this issue during the 1982 session. Thank you.

PRESIDENT: The Chair recognizes Senator Nichol.

SENATOR NICHOL: Mr. Chairman and members of the Legislature, I rise to oppose the reconsideration of LB 870. I want to draw your attention to what you are doing, and if you want to do what you will be doing, it is okay but I want you to know it so there is no doubt in your mind. LB 870 is the California approach and if LB 870 would have considered Nebraska laws instead of California laws, you would have the present proposal by the Judiciary Committee which is LB 568. I don't know much about California's criminal justice system but what I read and see they don't have any magic formula as to what we should be doing here in Nebraska. For one thing, they didn't have until 1981 the point one per se law which we have had for ten years. Now in case you are wondering what that means, it is that you have a test to show how much alcohol is in your blood and when you are legally drunk. We have had this .10 for years and all of a sudden last year California adopted it which made it a great thing to do. Now Senator Stoney has cleaned up some of the technical problems with his bill in his amendments, which amendments, incidentally, use language from the committee draft. Even so, LB 870 still won't work. Senator Stoney attempts to take the California penalties and place them into an enhanced penalty structure not in conformance with the Nebraska Criminal Code. Aside from the obvious technical questions, this approach is probably unconstitutional in context. Even if it isn't ultimately construed as an unconstitutional ex post facto provision, it violates due process of law in the way it attempts to enhance penalties. Nebraska law is quite clear on how you can enhance penalties. In fact, the only interpretation the Nebraska court could put on this bill to save it would be to construe it so as to wipe the slate clean for every drunk driver in the state. Consider for a moment what it would mean to the criminal justice system in this state if we passed a law clearing all drunk drivers of their past