

that they can't attack, so in answer to your question, the admission of both of us is that it can be attacked but they have to attack it.

SENATOR KRISTENSEN: Well, but they can attack that. I can see what is going to occur here, so I will just go on, and you can do your business and I will try to talk to the body a little bit about what this doesn't do. This does not create a new element. This does not provide some presumption. In fact, do you know what one of the major presumptions is? It is .10, presumes that you are intoxicated at the time that you were driving, a major presumption. Presumptions occur in the law every day. This does not tip the playing field. There is going to be a necessary period of time between the time you are arrested and the time the test is given. This presumption does not relieve the county attorney from the burden of proving every element of the crime. It doesn't deem that it occurs, big difference. It is not an absolute. If the defendant has some other evidence, this presumption can easily go away. This is not a Draconian presumption. This doesn't pervert the law. This doesn't do away with defendants' rights. The defendant has every right that they have ever had before, but what this does is in certain instances defendants are able to use the law to subvert the intent of the Legislature, and that is to test people for drunk driving at the time of their arrest. And so we are picking up... 90 minutes isn't magic, we could do three hours. We could probably do just an hour. The committee chose 90 minutes, and I think that that is the purpose that is in here. This does not shift the burden. This does not take away the presumption of innocence. It still allows the defendant their ability to attack the test like they would every day of the week. The judges still have the same burdens of proofs, and you are going to see some good-guy, bad-guy procedures in here this morning. Some will say, gee, we sure want to vote for the bill if we could just get this one amendment; and the next speaker may say, well, every amendment is substantive. Don't be confused. This is exactly what happens to the county attorney when he goes to a jury in a drunk driving case is that you try to put those elements in there, and I am just telling you that this is one of those pieces. This presumption, in and of itself, is not going to solve the drunk driving problem. It is not going to keep third offenders off the streets. It is just an additional piece, and what we intended to do was to update the drunk driving laws in the State of Nebraska to take the information and the input about what would make the system better. This was