

that's all...I want to limit it to that so it won't become confusing. Now the punishment for first offense driving while intoxicated or implied consent refusal carries a mandatory minimum of seven days imprisonment.

SENATOR KRISTENSEN: Yes.

SENATOR CHAMBERS: So, and the Supreme Court has said in several cases that to determine the seriousness that the Legislature views an offense with you look at the minimum, not the maximum. So if you'd have to serve more time under an implied consent refusal than motor vehicular homicide, is something skewered there or are we to make the policy decision that it is worse to have the implied consent refusal than motor vehicular homicide, not that a person would deliberately commit motor vehicular homicide to avoid this?

SENATOR KRISTENSEN: Well, Senator, that's the current law. I mean, that's been in the statutes for numbers of years and...

SENATOR CHAMBERS: Right.

SENATOR KRISTENSEN: ...has been that way. This discussion really I guess, if you want to dredge up problems you have with the current law that's probably true, but certainly the felony penalty is a more serious penalty because there are other penalties than punishments and the mere fact you get a conviction for a felony on your record is much worse than that of a simple misdemeanor. And so I guess I dispute with you that because there's a lower minimum or that because of a minimum, a mandatory minimum, somehow that's a harsher punishment than a Class IV felony. I just don't think that's true and I disagree with that.

SENATOR CHAMBERS: Suppose a person commits motor vehicular homicide and would be found to be under the influence, are they charged with two offenses?

SENATOR KRISTENSEN: No, they're...well, you can only charge, you can only be convicted of one or the other. You can't be convicted of both. They are not...they are lesser included. The driving while intoxicated would be a lesser included offense of motor vehicle homicide so when you went to trial you either would be convicted of motor vehicle homicide or you'd be convicted of driving while intoxicated.