

are in the bill out and debated. If there's problems, correct them. Before we start adding additional things into it, let's get to the meat of the bill. We have yet to discuss the bill and at least that's what we're into now. With this provision, what this provision would do, and Senator Chambers very accurately said it for and actually thought of a side of it that I didn't, that I hadn't considered and that is the question of all the retrials that may or may not occur. And using the example, and I've got the brief on my desk here, I've been trying to read through it for a while, on State v. Ronald E. Williams in which the court reversed, well, actually found plain error, malice, as Senator Chambers had mentioned, malice being a part of second degree murder. Because of that case, because...and this is not the first case. This case, it has been about 15 times the court has said that. And because the Legislature didn't proactively take some steps to change that, we have about 130 retrials that we're going to have to do. So I think it behooves the Legislature to step forward when we see that there may be a problem, step forward and say this might be a problem, we'd better look at it. The problem we have and what this would do is insert the language, "Unless the possession, use or discharge of a firearm is an element of the felony being committed". It applies to those situations where you cannot commit the underlying felony without using a firearm. If you are charged the offense of discharging a firearm at a house, for example, you cannot, it is absolutely, completely impossible to commit that offense unless you use a firearm. So we are charging for the same exact same conduct, we are charging with useful weapon and shooting at a building. I think it's pretty clear and that element, in response to Senator Abboud, no, there is not, at least that I'm aware of, an appellate case that's out there, but there will be and I...maybe I read the Constitution differently than a lot of people, I'm sure I do, but when it says that, makes reference to double jeopardy, this is exactly I think what it is talking about. You do...you commit an offense and then for the exact same conduct, exact same conduct, you have an additional offense. You cannot, I don't think, do that, you cannot twice be put in jeopardy for that same fact pattern and because of that I think this is a proactive response. And as I mentioned, if this amendment gets defeated, it's not going to bother me. I will have made my record, and if that scenario comes down where the court orders retrial, at least...I guess at least I'm covered, but if we think we're not getting tough on crime, if we're not getting tough on crime, first of all, Senator Chambers wouldn't be...going to be dragging out the