

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
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defendant, we believe that he has resided in Nebraska and Iowa within the last twelve years. We have searched the database in both of those states and find that so-and-so has no prior convictions that are reflected as result of the search of that database; signed, so-and-so, prosecutor.

SPEAKER KRISTENSEN: So it would be...

SENATOR BROMM: That's an example, but that is the kind of thing I would expect them to do, due diligence, to satisfy that requirement.

SPEAKER KRISTENSEN: Let's say that there was a plea negotiation reached where the case was a close one for guilt or innocence, and the plea negotiation was that, if you plead to a first, we won't enhance. Is that barred or prohibited by this procedure, or is all you're doing saying I've used due diligence to obtain the driving record, but I choose not to offer the certified copy of the second offense for enhancement; is that still possible?

SENATOR BROMM: That is still possible, but the court would at least be appraised that there was a prior, and I think it would be incumbent upon the prosecutor, which I think normally they would do, is to give their rationale for why they are not enhancing the charge...

SPEAKER KRISTENSEN: Okay.

SENATOR BROMM: ...and asking that the court approve a plea bargain.

SPEAKER KRISTENSEN: And my other question is that it says, when the prosecutor shall certify to the court that such action has taken place, that's the affidavit, is that in addition to or is that how you prove due diligence?

SENATOR BROMM: That's...that's how you show the court that you have take...that you have carried out due diligence.

SPEAKER KRISTENSEN: And finally, if...may the defendant appeal, based on that due diligence wasn't done, may the defendant appeal the sentence based on the county attorneys failure to use