

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office

March 16, 2000 LB 1004

because, and this is why I think these discussions are good and helpful, because we're dealing in an area that is not the easiest. And I don't think any of us who has drafted an amendment will present it as though it's the perfect and ultimate solution. But the language says, in any case charging a violation under this section, then it tells what the prosecutor must do. Were I the lawyer for a defendant, I would say the failure of the prosecutor to comply with the requirements of this section would prevent the prosecutor from using this section. And if a court had allowed the proceedings to go forth, then on appeal my argument would be that any part of the judgment, any part of the action, any part of the judge's decision, however I would phrase it on appeal, which relied on this section would have to be set aside because the section itself was not complied with. And now I'll give an example. When you're charged with a speeding violation, the law says that the speed of the defendant must be established as well as the maximum speed limit, and these are essential elements of the offense. So, if one of those is not proved, then the speed conviction cannot be obtained. So, in this particular situation we're talking about enhancement. The person will be found guilty, perhaps, of the charge of driving drunk that brought him or her before the court in this instance. Let's say guilt has been proved with reference to this particular incident. Then this section comes into play for enhancement purposes. The enhancement could not occur, I'm just giving my opinion, remember, if the conditions set out in statute that must be met in order for enhancement to occur are not met, then there can be no enhancement. It would say, you must establish points one, two, three, four, all of them, and you fail to establish one of them, there can be no enhancement. Let's say you want to introduce a foreign judgment relative to a conviction someplace else. The law under which that conviction took place was not the same as Nebraska's law, so you fail at the first step. Let's say that you would present this conviction from another state and it's law was similar, so that it could stand if all other conditions were met. But there was a failure to establish by evidence that this conviction actually did take place, or that the means submitted by the prosecutor to prove that this was a valid conviction...

PRESIDENT MAURSTAD: One minute.