

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

May 19, 2003

LB 209

reason I would want that word to stay there, even though it's a conclusion drawn by the officer which may not stand up in court, we should require these officers to be aware of the fact that no arrest is to be made unless there is probable cause. Now, if we strike this word where the officer has to swear that it was a valid arrest, the officer does not even have to give an opinion as to the validity of the arrest. To say that the officer would state reasons does not have anything to do with probable cause. The officer could say, this person looked like he or she should not have been in this neighborhood; it was later at night than I thought a person in a car such as this should have been driving in this neighborhood. Those can be considered reasons. But they do not constitute probable cause. An arrest cannot be made unless there is probable cause. A warrant must be issued on the basis of probable cause if it's to be issued. Now, if a stop is made, an officer can have reasonable suspicion as a basis for making a stop. But that stop on the basis of reasonable suspicion is not an arrest. It's an investigative stop. It cannot go on for more than a reasonable period of time, or it becomes an arrest, whether the officer calls it that or not. After that period of time...and it's not based on a clock. But if more than the amount of time that ordinarily might be taken to look into whatever the officer said raised his or her suspicion, then it becomes an arrest if the person is not allowed to leave. And once that threshold is crossed from an investigative stop to an arrest, there has to then be probable cause existing to hold that person under arrest. If there is no probable cause, the arrest is illegal. And anything found after that point cannot be used, because the...it is fruit from a poisoned tree. Now, here's what I'm getting at. I want officers to know that arrests are different from investigative stops. An investigative stop cannot be pretextual. Meaning, the officer cannot just have a hunch that something is wrong. And that is a term the Nebraska Supreme Court has used in brushing aside certain arguments by officers that they had a reasonable suspicion. They have to give what the court calls an articulable reason on which the suspicion is based. That reason does not rise to the level of probable cause, or an arrest could be made. When these officers stop a person under these circumstances, and an individual can be informed that his or her license is going to be immediately revoked, and then you have