

January 6, 1984

LB 377

the right to choose which of those tests he would like to take, the blood or the urine test. All right, that is choice number one that he has, which kind of test he wants to take. And in addition to that he has another alternative and that alternative is basically to have a private physician of his or her choice to then immediately do another test. Okay, so that is the second choice that the person has, two choices. Now what the law does not provide is that it doesn't say that anybody has to tell the person of those two alternatives and Senator Chambers has come into the Judiciary Committee and he has put in here language that says that the officer has to tell them that they have the option of taking the blood or urine test and has to tell them in addition that they have a right to a physician to evaluate, their own physician to evaluate their condition. They have to tell them both things. Okay, the committee amendments, the Judiciary Committee said, fine, let's tell them but let's put in there a provision that says if you forget to tell them that doesn't mean they are off the hook. And so the language of the committee amendment, the important language is, "the original test shall be competent evidence despite the failure of any law enforcement officer to inform the person tested of those two options." So that is the public policy decision you have to make. First of all, do you want to inform them of those options, and secondly, and this is the question with the committee amendment, what is the remedy if they are not informed? Is it, tough luck or is it that the evidence of the original test cannot be used, and the Judiciary Committee in promoting the committee amendments is taking the position that we would like to tell them but we would not like to leave the possibility open that they will not be convicted because the blood test cannot be introduced because they failed to inform them of one option or the other. Thank you.

SPEAKER NICHOL: Senator Haberman, then Senator Goodrich.

SENATOR HABERMAN: I would rather wait. Is Senator Chambers going to speak on this? I will wait until after Senator Chambers speaks on it.