

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

February 5, 1997 LB 210

prosecution, but they have to pass one of those hoops, that they administered and drew the blood in an acceptable manner. What the second purpose of this bill does is allow for the creation of an affidavit that they can affirm, in a notarized statement, we drew the blood in a medically acceptable manner, and that we delivered it to a law enforcement officer. This notarized certificate is admissible in the court and that is what the bill does. Now let's say that there is some question that it was not drawn in a medically acceptable manner, let's say that there is some issue as to whether they used an alcohol wipe on their arm before they drew the blood, and, technically, when they stuck the needle in, it might have got a little bit of blood...a little bit of alcohol and that is the reason the test result is so high. The bill doesn't prevent discovery of anything that the witness will testify to. So you have full discovery. They can still be called and subpoenaed as a witness, and in those cases, it's probably appropriate that they come, if they are going to turn and if they are going to be a crucial witness, there is still the opportunity. If you look on the committee statement as to who supported this, you will find in there the nurses association is very interested into it, the county attorneys association. Criminal defense lawyers did not come in and testify against it and I'd suggest to you one of the reasons for that is generally that, let's just say nurse, for example, usually can be a witness against the defendant because if you've got a tough case, and you'll say, well, witness A, did you observe the defendant before you drew the blood? Yes, they were belligerent; yes, they reeked of alcohol. It turns out that there the defense...they could be the defense's worst witness, so that's probably the reason you don't want to see the defense lawyers looking at this because that can actually harm their case. The other part is they know full well that they can call and subpoena them and get that evidence anyway. The bill would be much easier for the nurses. Most of them are not crucial in these prosecutions. I don't want to start having trial and having evidence only by affidavits, but this is one of those few times where I think it is acceptable, I think it is good public policy, and I've got to thank Senator Crosby and Senator Vrtiska here for this, helping with this bill. We've certainly had a number of things through the Transportation Committee dealing with driving under the influence. This is one that we had in last year's package. I would hope you are going