

February 6, 1974

SENATOR PROUD: Mr. President, I presume there are other members of the Judiciary Committee here. I have no reason at all to stand in the way of Senator Savage's bill, but as a lawyer I do have some questions about it. Is Senator Luedtke here? Well, Senator Carstens is. My question is, I share the concern of Senator Chambers. A misdemeanor is basically something that is not a felony. A misdemeanor is basically something that is not a felony. And a felony is basically a crime that is punishable by imprisonment in the state penitentiary. So a misdemeanor can be serious thing. A crime can run up into. I don't off the cuff know what the maximum years is, but certainly it can run into hundreds of dollars and be a jail sentence. And if you can just mail..and a misdemeanor is a crime. Now, if I have the jest of this bill correctly you can mail the charge or the subpoena to the last known address and then if the person doesn't appear in court at the time designated he can be physically hauled into court at the by the writ from the Judge. For..If that is the situation, I can see some very definite dangers. For example, let's suppose that summertime or whatever and you are taking a two week vacation or whatever in some other state or some other country and you are charged with some misdemeanor wherein the fine can be thirty days, or sixty days or six months in jail and you don't show up because you never got notice of it, then it seems to me that that presents a very real danger. If that is the situation I just like to ask somebody to answer it for me is all.

PRESIDENT: Senator Stull, do you care to respond.

SENATOR STULL: That takes care of that because if you read that it says the person making such service shall make a return thereof, showing the manner and the the proof of service. And we feel that we have taken care of Senator Chamber's objection. We hope we have.

SENATOR PROUD: Senator Stull, the proof of service, does that mean that you have mailed it? I mean it's one thing to mail something. It's another to hand it to a person personally.' Now if..I would be apprehensive, and I'm just trying to get information. I'd be very apprehensive if you can find a man guilty, I don't know if you can find him guilty or not, but if you can haul him into court. Send the Sheriff out to do that. If he hasn't actually received the notice. Now let's say like Senator Chambers suggested. The man or woman is in the hospital and so they are in default. Well I understand this in a civil case, but in a criminal case, I'm not so sure that's the thing to do, but I'm just trying to seek a little enlightenment on it. Is the proof, just the proof that he has mailed it to the last known address?

PRESIDENT: Senator Fellman do you care to respond. Let's try someone else here. Senator Fellman. Stand by we will find you in a minute. Just a minute.

SENATOR FELLMAN: Mr. President and members of the Legislature. I think I can answer some of the questions that Senator Proud is raising and that some of you might have. First of all, And I'd like to just explain the bill, Senator Proud. This bill does not apply to a defendant. The person who is charged with the crime. If you read the bill itself on page 2, it says it applies only to witnesses. And criminal misdemeanor cases, the Clerk may issue writs of subpoena to the witness named therein. It doesn't say the party. Secondly it says that the subpoenas may be issued rather than being served by a Constable, which is