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Transcriber's Office

Judiciary Committee
January 22, 2010

[LB728 LB769 LB824 LB915]

The Committee on Judiciary met at 1:30 on Friday, January 22, 2010, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB769, LB915, LB728, and LB824. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash; Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: None.

SENATOR ASHFORD: (Recorder malfunction)...will be LB769, Senator. Welcome, Arnie. [LB769]

SENATOR STUTHMAN: (Exhibit 1) Thank you. Chairman Ashford and members of the Judiciary Committee, my name is Arnie Stuthman, A-r-n-i-e S-t-u-t-h-m-a-n, and I represent the 22nd Legislative District and I'm here to introduce LB769. LB769...first of all, I would ask the page...I have some handouts. Thank you. LB769 provides immunity for county clerks in regards to marriage licenses. Over the interim in 2009, the Nebraska ACLU sent letters to various counties in Nebraska questioning their method of gathering information when persons applying, for persons applying for marriage licenses. LB769 is the result of negotiations between the Nebraska Chapter of ACLU and the Nebraska Association of County Officials. It gives county clerks immunity from liability if persons present or give false information or documents when applying for a license. This is necessary because county clerks have no guidance to determine the types of documents that they are accepting. There are representatives here from NACO and the County Clerk's Association that are here today and they will be able to answer some of the questions. And the information that I had the pages pass out was from Diane Pinger, the clerk of my county, Platte County, and Platte County was one of the counties that had received a letter from that, and some of the other counties were Lincoln, Richardson, Sherman, Phelps, and Hall County. Those were the counties that had received letters from the ACLU. So with that, that is my opening and I'd be willing to answer any questions. [LB769]

SENATOR ASHFORD: Any questions of Arnie? It's great that everyone got together on this and it makes it a lot easier. [LB769]

SENATOR STUTHMAN: Yes. [LB769]

SENATOR ASHFORD: That's the way to do it. Thanks. Yeah, you going to stick around or...? [LB769]

SENATOR STUTHMAN: Yes, I'll stay for closing. [LB769]

SENATOR ASHFORD: Any proponents of LB769? [LB769]

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JON EDWARDS: Good afternoon, Senator Ashford and members of the committee. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s, and I represent Nebraska Association of County Officials. And we are here today in support of LB769 and thank Senator Stuthman for bringing this bill forward for us. Senator Stuthman did a good job of touching on the issue. Last year it was brought to our attention. The ACLU did contact the Nebraska Association of County Officials about concerns they have with a handful of counties regarding information that they were distributing or disseminating regarding what requirements were in place when going in to obtain a marriage license, to put in an application for a marriage license. Through conversations with the ACLU and with our county clerks, we were really left with a couple of options on the table. We could either (a) try to figure out some system whereby we come up with some sort of a laundry list as to what is acceptable and what is not acceptable when presenting satisfactory documentary proof, which is what the language in the statute is. Or we could go another route and try to find another solution to the issue, put our heads together. The ACLU and the clerks both agreed on the idea of providing some sort of immunity for clerks in that there seems to be such a broad array of forms of identification that clerks really should accept or must accept based on different court cases and different findings that have been from around the country. And so in the end, the determination was made that the clerks felt like they'd better be able to do their job in a situation like this. If they felt like they made a good, fair determination when the information, the identification is presented to them about the individual making application for a marriage license, and provided they make a good faith attempt to do that, then, in the end, they felt like they wanted to be able to have some immunity from later on somebody coming back to them in the future. Not that it has happened, but that it possibly could, and saying to them, well, you should have known better that this particular piece of identification or the translation of a particular piece of identification was incomplete or was improper. They want to be able to make a good faith effort up front and then feel like once they've completed that task that's been put before them, that they don't have to worry about that in the future. So in the end this was the solution we tried...we reached with the ACLU and the clerks agree with it. And so that's what we're here today to try to help clear up this issue a little bit. It has been going on for a number of years. I know the clerks have had some issues with this. They've had conversations with HHS. HHS has not been willing to give them any directive in terms of what satisfactory documentary proof is. Of course, they need that in order to determine proper age to get married, and also to establish the name of the applicant, the residence, the place of birth and those types of things. So that's where we're at on this and we support this. Again, thanks Senator Stuthman, and we'd ask that you advance this bill to the floor for the full Legislature. Thanks. [LB769]

SENATOR ASHFORD: Any questions? Yes, Senator Council. [LB769]

SENATOR COUNCIL: Yes, thank you, Mr. Edwards. So that I understand what situation this legislation is seeking to address or what concern of the county clerks this legislation

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is seeking to address, because the issue that was presented last year involved a myriad of issues not the least of which was, what is satisfactory documentation. This really doesn't address that issue, correct? [LB769]

JON EDWARDS: It kind of depends on how you look at it, I think, Senator. I think, and correct me if I'm wrong as I recall some of the information and I was privy to, I think, five letters that were sent out to separate counties. It was pretty, you know, limited in the number of counties that this issue popped up, and it dealt with both...you had issues of information on Web sites about what is required in terms of identification when you come in to apply. The other thing had to deal with information disseminated otherwise outside of the Web site, other printed materials that an individual might get from a county. And then also, some actual information from employees within the clerk's office when individuals would come in seeking a marriage license and in the application process were told certain things about what's required of them on a number of different issues, as I recall. I don't know the specifics of that. But my understanding is it was mainly those three broad general areas that the issue popped up for the ACLU on this. [LB769]

SENATOR COUNCIL: Okay, because I...it's my recollection that one of the issues presented was a denial of an application for a marriage license based upon the county clerk's determination that satisfactory documentation of one of the requirements wasn't presented. And then when I read this legislation, my question is, how does this address that? It doesn't address that, does it? [LB769]

JON EDWARDS: Well, I think if the county clerk makes a determination from their best judgment based on, well, this to me doesn't look like a valid ID and I don't know whether it's valid or not, it sure seems to look official. And I'm only speaking hypothetically because I don't know the details of that specific case. [LB769]

SENATOR COUNCIL: Right. Right. [LB769]

JON EDWARDS: And that county clerk looks at it and in this day and age with the documents you can create, it certainly could look official. However, they may still question, well, I've never seen anything like this. How am I to know that this is right or wrong in terms of the information that is presented to me? So in that instance, our clerks don't...they're not trying to get away from their obligation in law at all. What they're trying to do is accommodate those individuals that want to get married but yet feel like they're doing their job to the best of their ability. If an individual presents a document like that, it looks official, it provides the information necessary, they meet their obligations, in that circumstance, then the clerk would accept that as a satisfactory documentary proof of the information needed. And then at that point in time they would issue the marriage license based on that information. It's certainly not going to mandate the clerk in that, you got to because they gave you something. If I write out information with a crayon on

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a piece of paper and hand it to you and say this is my age and where I'm from and so on and so forth, obviously, you know, they could deny it in that situation. It's not satisfactory. But that's the attempt here is to give that clerk the sense that, well, if I accept this I don't have to worry about later on somebody coming back and saying, well, you should have known that this wasn't proper, in the event it would happen to be some sort of a forged document or something like that. That's what we're trying to get at here. Just to give them some sort of assurance so that they aren't so quick to feel the need to deny the application because they're not certain of the document that's in front of them. [LB769]

SENATOR COUNCIL: Okay. Well, I'll share with you my concern because I think the issue goes beyond whether or not the information provided is inaccurate, incorrect, is incorrect or false. I guess that's what I'm having some question about whether this goes far enough to address the concern. Because if I complete the application and everything that I've stated in the application is correct, nothing in the application is false, but I'm denied an application. I'm denied the license. What in this would provide a county clerk with protection against liability because there's nothing in it that's false and there's nothing in it that's incorrect? [LB769]

JON EDWARDS: Right. And I think what this bill is trying to do is, in that event you'd still have to provide some sort of identification that what you're attesting to on the form is what it is. And this just helps them to feel confident in taking that to be satisfactory documentary proof. And so, therefore, they're going to be more willing and not bring their own judgment into that case. I kind of see where you're at and I would...and if we can do things to improve this, we're certainly willing to try to do that. But what I would say is, it's going to be very difficult to get at the intent of certain individuals in given cases at points in time. It's sometimes difficult to remove that human element. But all in all, county clerks want to do the job right. That's what they're trying to get at here. [LB769]

SENATOR COUNCIL: Absolutely. And I...you know, the objective, too, is, if you're not going to provide them some guidance, provide them with some protection. But I'm just questioning whether this provides the kind of protection that is actually being sought. [LB769]

JON EDWARDS: And Senator Council, we're willing to work with you on some language that you might think might help that. We're certainly willing to do that. We're trying to get it there so that they can...they've had concerns about this for a number of years, so. [LB769]

SENATOR ASHFORD: Okay. Good. Thanks. No more questions, I don't believe. [LB769]

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JON EDWARDS: Thank you. [LB769]

SENATOR ASHFORD: Next testifier. Anyone else want to talk about LB769?
Opponents? Neutral? Senator Stuthman. [LB769]

SENATOR STUTHMAN: Thank you, Senator Ashford. And in closing I would just like to state, you know, we're trying to make it so that it kind of removes the burden from the county clerk that she has to be very conscious of the fact that, you know, if she issues the marriage license, you know, and the documentation that was given to her is it right, is it wrong, or anything like that, and that she could be held liable. What we're trying to do here is make sure that if according to the guidelines of the documentation that is to be given for the issuance of a marriage license is there, she don't have to...the clerk, the individual don't have to worry about being prosecuted for accepting a wrong documentation but it is a documentation that they are willing to accept. So with that, I'd answer any questions. [LB769]

SENATOR ASHFORD: Thanks, Arnie. Thanks for that. Any questions of Arnie? Thanks, Arnie, very much. [LB769]

SENATOR STUTHMAN: I would also like to ask that if you would move this on, early on, that we could get it onto the agenda, if I could get that done, so. [LB769]

SENATOR ASHFORD: Okay. [LB769]

SENATOR STUTHMAN: Thank you. (Laughter) See also Exhibit 8. [LB769]

SENATOR COUNCIL: Oh, he reads the newspaper. [LB769]

SENATOR MCGILL: Is it my turn? [LB769]

SENATOR ASHFORD: Yes, it is your turn, Senator McGill. Sorry, I was... [LB769]

SENATOR MCGILL: I was looking for directions. [LB769]

SENATOR ASHFORD: I was just thinking about what Senator Council said for a moment and I was pondering that. [LB769]

SENATOR MCGILL: Oh, pondering...was a moment to meditate for a moment. [LB769]

SENATOR ASHFORD: Yeah, just a small, you know, meditation. Senator McGill, LB915. [LB915]

SENATOR MCGILL: All right, Chairman Ashford and members of the committee, I'm

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Amanda McGill, M-c-G-i-l-l, and I represent the 26th District in Lincoln. And I'm here today to introduce LB915, which is a rehash from a couple of years ago. When Senator Schimek was still here, she brought this bill for some of the folks here in Lancaster County dealing with driver's license numbers. LB915 would provide the Department of Motor Vehicles and the individual in charge, or provide that they...the person in charge of the voter registration files, add driver's license numbers to the records provided to the Jury Commissioner, which is used to create the pool of jurors. In 2005, Nebraska created a statewide voter database which was required by the passage of the Help America Vote Act of 2002. As part of the statewide database, the election officials are now required to obtain the driver's license numbers of voters. Not long after the state converted to the statewide voter database system, the Secretary of State's Office did a match between the voter system and the DMV's driver's license list, and then added the driver's license numbers to the voter file. Nebraska Statute 25-1628(2) states that once the voter list and the driver's license list are combined, then the Jury Commissioner shall attempt to reduce the duplication to the best of his or her ability to produce a master list. If this bill is passed, then it is my understanding that the Jury Commissioners' will have one additional field available to reduce the duplication of names in the master jury list. This is probably a better means to reduce duplicates as the driver's license numbers never change while names and addresses do. I introduced this legislation at the request of both the Lancaster County Board of Commissioners and the Lancaster County Election and Jury Commissioner. There is a representative of their office that is planning to testify after me. I appreciate your attention and would answer any questions that you may have. [LB915]

SENATOR ASHFORD: And maybe someone will...this expands, we expanded the jury eligibility last year with Senator Council's bill, wasn't it? [LB915]

SENATOR MCGILL: Yes. [LB915]

SENATOR ASHFORD: And I assume there's no inconsistency or conflict, but... [LB915]

SENATOR MCGILL: I don't think so. [LB915]

SENATOR ASHFORD: No, I mean, there's another...there's just another form of identification involved. [LB915]

SENATOR MCGILL: Yeah. Now, I think this is relatively uncontroversial. We just didn't vote on it last time. It just wasn't a priority. [LB915]

SENATOR ASHFORD: Okay. Any questions of Senator McGill? And I assume you'll be remaining here in your area. Okay. Any proponents? Here's one. [LB915]

DAVID SHIVELY: (Exhibit 2) Good afternoon, Senator Ashford and members of the

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Judiciary Committee. My name is David Shively, that's S-h-i-v-e-l-y. I'm the Lancaster County Election and Jury Commissioner and I'm here today in support of LB915. Senator McGill basically said what I was going to say too, so I'll just kind of reemphasize some of the things. We're required by statute when we merge the voter list and the driver's license list to reduce the number of duplications as much as possible. That's actually in the state statute 25-1628. This bill allowing us to use both, getting driver's license numbers from both the DMV as well as from the Election Commissioner, and I happen to serve in that capacity as well as the jury commissioner here in Lancaster County. It will just give us one more means to try to reduce the number of duplications in there, which in the long run may help us save a little money by not having to send out as many summons, also maybe not have as many bad addresses and those types of things. I did hand out a letter of support, I gave to the pages, from the District Court Clerk's Association in support of this, but I would be willing to answer any questions. This is something I thought of once we were able with the passage of the Help America Vote Act on the election side when we started gathering the driver's license numbers from that, I just felt this would be a good idea if we could try to reduce some more duplications. Because when you try...briefly what you do now when you do reduce duplications you're basically looking at name, date of birth, and possibly address. This would be just another method for us to maybe reduce some additional duplicates between the two of us. [LB915]

SENATOR ASHFORD: Okay. Yes, Senator Lautenbaugh. This is sort of up your alley, isn't it? This is sort of your field, kind of? [LB915]

SENATOR LAUTENBAUGH: Yeah, I don't know if I ever mentioned but I did use to be in the Election Commission. (Laughter) [LB915]

SENATOR LATHROP: You're kidding. Seriously? [LB915]

SENATOR LAUTENBAUGH: Yeah, it never comes up. [LB915]

SENATOR ASHFORD: You know it's amazing what you learn if you come to these hearings. (Laughter) [LB915]

SENATOR LAUTENBAUGH: Mr. Shively, good to see you again. Is this...will these driver's license numbers be contained in the voter file? [LB915]

DAVID SHIVELY: They already are in...we do have those in the voter file at this point. [LB915]

SENATOR LAUTENBAUGH: Are they in the version of the voter file that's distributed to campaigns and what not? [LB915]

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DAVID SHIVELY: No. [LB915]

SENATOR LAUTENBAUGH: And this wouldn't put them in there? [LB915]

DAVID SHIVELY: No. [LB915]

SENATOR LAUTENBAUGH: Similarly, when the list of jurors goes to the courts, that list is distributed to attorneys. [LB915]

DAVID SHIVELY: That's correct. [LB915]

SENATOR LAUTENBAUGH: Would the driver's license numbers appear in there? [LB915]

DAVID SHIVELY: No. [LB915]

SENATOR LAUTENBAUGH: So it's solely an internal thing to help you root out the duplicates? [LB915]

DAVID SHIVELY: That's correct. [LB915]

SENATOR LAUTENBAUGH: Thank you. [LB915]

SENATOR ASHFORD: Good. Thanks. No other questions? Thank you. [LB915]

DAVID SHIVELY: Thank you. [LB915]

SENATOR ASHFORD: Any other proponents? [LB915]

ELAINE MENZEL: Chairman Ashford and members of the Judiciary Committee, my name is Elaine Menzel, M-e-n-z-e-l, here on behalf of the Nebraska Association of County Officials. And I just wanted to express our support for LB915 and I believe Mr. Shively and the Senator have addressed the technicalities of this bill. [LB915]

SENATOR ASHFORD: Good. Well, welcome back. [LB915]

ELAINE MENZEL: Thank you. [LB915]

SENATOR ASHFORD: It doesn't look like we have any questions, so thank you. Any other proponents? Opponents? Neutral? Senator McGill. Okay, that concludes the hearing on LB915. Senator Lautenbaugh, LB728. [LB915]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman and fellow committee members.

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I was contacted by the Attorney General's Office and asked to bring LB728 and I gladly did so. LB728 is modeled after existing federal and Florida laws giving a civil cause of action to victims of child pornography. It gives any child or their parents and guardians, who was either involved as an observer or participant in any visual form of child pornography, a civil cause of action against the offending party. An offending party under this act would be any person who, while in Nebraska, created the pornographic depiction, distributed the pornography in question, actively acquired the pornography in question, aided or assisted in the creation, distribution, or active acquisition of the pornography. To prevail in a suit under this act the victim must show that the child participant...that they are the child participant or portrayed observer in the visual depiction of the child pornography; that the pornography was created, distributed, or actively acquired by the defendant or someone who aided or assisted the defendant while within Nebraska's boundaries; and if they suffered or continue to suffer personal or psychological injury as a result of the defendant's actions relating to the pornography. There's a limitation of actions on this. The later of three possible dates, probably the latest of which would be usually three years from the date of the 18th birthday of the victim. The victim can recover actual damages, no less than \$150,000, reasonable attorneys fees, and a temporary, preliminary, or permanent injunctive relief as the court sees fit. They are allowed to bring the claim using a false name to protect their identity. The following do not qualify as defenses under this act: Not knowing the victim, not personally appearing in the pornography in question, or the person was not present or participating in the creation of the pornography. Under the bill as it's written, the Attorney General's Office is authorized to pursue a claim on behalf of a victim at the victim's request. The award would still go to the victim, but the Attorney General's Office would be able to recover attorneys fees for the action. This act allows the cause of action when the pornography is created in Nebraska, is distributed by someone present in Nebraska, or it's actively acquired while the offending party was present in Nebraska. This is not meant to serve as what we would refer to as a long-arm statute. It does not apply to victims who live in Nebraska but the offending individual is in another state or country. It further does not apply to victims who live here now, but the pornography was created in another state or country. And it further modifies statutes defining "crime victim" to include victimization by child pornography. This allows them to be notified under the Nebraska Victim Rights Act when an offending party has wronged them and is apprehended. I know there are representatives from the Attorney General's Office here. I'll be here as well to take any questions you may have now or after. [LB728]

SENATOR ASHFORD: Any questions of Scott? [LB728]

SENATOR LATHROP: I do. [LB728]

SENATOR ASHFORD: Yes. [LB728]

SENATOR LATHROP: Two questions. In the list of things that are not a defense, you

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don't have that you didn't know or have reason to think that the person was under 16. And I'm wondering if you meant for that to be a defense. In other words, if you pick somebody up or you sue somebody on this cause of action, and the guy says, well, she told me she was 17. Is that going to be a defense in this case or are we going to have the, sort of the statutory rape sort of a standard? [LB728]

SENATOR LAUTENBAUGH: I believe it would be more of the standard and I would design it as such to be more of the standard. That's generally prevalent in child pornography cases otherwise. [LB728]

SENATOR LATHROP: So a mistake or being misled about the person's age would not be a defense? [LB728]

SENATOR LAUTENBAUGH: I believe in some circumstances it would be a defense, but I'd defer to the AG's Office on that. [LB728]

SENATOR LATHROP: Okay. The other thought I had about it as I read it is, you can bring a cause of action for physical and emotional injuries and then you say the minimum damages are \$150,000. And I'm wondering, just bringing it up, if you don't have physical damages, I mean, any kind of personal injury claim at least has to have some kind of damage, right? So if there's not a physical injury, and then the emotional injury, if they've never received any treatment, I don't know that you get to the courthouse. You know what I mean? [LB728]

SENATOR LAUTENBAUGH: There may be a disconnect. [LB728]

SENATOR LATHROP: But I like the idea. [LB728]

SENATOR LAUTENBAUGH: Sure. [LB728]

SENATOR LATHROP: I'm just wondering if there's a loophole in it. [LB728]

SENATOR LAUTENBAUGH: Well, there may be a disconnect there and the \$150,000 figure is one that I was wanting to talk about further as well. Because I'm not sure how that connects with the requirement of the actual damages, where that number comes from as a connection to it. So that maybe something we want to tighten up, certainly. [LB728]

SENATOR LATHROP: Yeah, it's...I just wonder if the person doesn't have psychological injuries bad enough to get care, which is the standard, I think, you would agree. And if they don't have any physical injuries, if you can even bring the cause of action and get to the minimum damages. [LB728]

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SENATOR LAUTENBAUGH: As written, I would argue, that's an open question. [LB728]

SENATOR LATHROP: Okay. [LB728]

SENATOR LAUTENBAUGH: We may either want to tighten it up or we may want to limit it to just those individuals that have actual damages as we discussed. [LB728]

SENATOR LATHROP: Okay. [LB728]

SENATOR ASHFORD: Senator Council. [LB728]

SENATOR COUNCIL: Yes, thank you, Senator Ashford. Senator Lautenbaugh, in your opening you made reference to that LB728 is consistent with existing federal and Florida law. What federal law? [LB728]

SENATOR LAUTENBAUGH: You know, I apologize. I have a citation to...or reference to the federal law here but I don't have a citation to the act. I will gladly get that for you but I don't have the citation. [LB728]

SENATOR COUNCIL: What does the federal law provide? [LB728]

SENATOR LAUTENBAUGH: It's very similar to this. It tracks along with it. This is sort of taken from it, if you will. [LB728]

SENATOR COUNCIL: So, I mean, I guess, I'm saying...so as the federal law exists, a victim or the guardian or parent has a federal cause of action now? [LB728]

SENATOR LAUTENBAUGH: I believe that's the case. It's certainly the case in Florida. And yes, I believe it would be the case under the federal law too. [LB728]

SENATOR COUNCIL: So the intent of LB728 is to create a state cause of action in addition to the federal cause of action? [LB728]

SENATOR LAUTENBAUGH: Yes. [LB728]

SENATOR COUNCIL: And does the federal cause of action have a minimum recovery? [LB728]

SENATOR LAUTENBAUGH: I don't know for sure if that's from the federal one or the Florida one, to be honest. [LB728]

SENATOR COUNCIL: That's all I have. [LB728]

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SENATOR ASHFORD: Thanks, Scott. [LB728]

SENATOR LAUTENBAUGH: Thank you. [LB728]

SENATOR ASHFORD: Is this bill the one that has the audio visual presentation?
[LB728]

DAVID COOKSON: It does. [LB728]

SENATOR ASHFORD: Or is it just visual? [LB728]

DAVID COOKSON: It's all through the audio. [LB728]

SENATOR ASHFORD: Okay. [LB728]

DAVID COOKSON: Chairman Ashford and members of the committee, I'm David Cookson, chief deputy attorney general, last name spelled C-o-o-k-s-o-n. Before I get to Senator Lathrop and Senator Council's questions, I did want to give you a general idea why we came to Senator Lautenbaugh with this particular provision. One of the aspects of...insidious aspects of child pornography is, there is an initial event and a child is victimized. But then it happens again and again and again. That's one image of a child. That's how it spreads. What we want to bring with this act is three-fold. We do punish, if we catch them, the perpetrator, but we don't always catch and punish the folks who distribute and who acquire this and who continue to distribute and acquire this. We had a guy in Bellevue who not only was creating these things with young teenage girls under the age of 16, but he was sending them out to his MySpace friends and teaching them how to do the same thing. He basically created an instruction manual using the images of these girls and they're children, they're revictimized every time it happens. So the idea of this bill, which again we came...we talked about this in conjunction with the federal law and primarily the Florida law and came up with the idea of bringing this to Nebraska and creating a state cause of action. The \$150,000...let me address that question first. That is the amount that's contained in the Florida law. We used it as a starting point. The idea is to...in our discussions with the folks in Florida was, it's akin almost to a life care plan for a quadriplegic or a paraplegic. You have some idea of what psychological treatment may be necessary going forward and it may be that the problem with these kinds of cases is the injury, the psychological injury may not manifest itself at the time the cause of action is brought or even three years or six years later. It's a situation where this trauma, often repressed, may show up ten, fifteen, twenty years down the line. The idea as we understood it from our discussions with Florida with the mandatory amount, or the minimum amount was to at least create a recovery so that should that come to pass, they would have a pool of resources to use to obtain treatment. It is clearly outside of what we normally do in the civil arena. And with that, we understand why there are some questions. We know some members of

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the bar have contacted us directly and raised that same question. And as we discussed with...or as Senator Lautenbaugh indicated, we are willing to discuss that. Again, this is primarily patterned after the Florida law. I would add that Nevada also has a similar law. Senator Council, we'll be happy to get you copies of all of those and any other of the members of the committee that would like those. But as you can see... [LB728]

SENATOR ASHFORD: Now, we still have our little time limit now here. We're not using the lights, but... [LB728]

DAVID COOKSON: All right. It really came down to for us as we've been investigating these cases, particularly as we've started to infiltrate the peer to peer networks. It's become apparent to us how insidious and how quickly these images spread and these victims are victimized for life because that image is forever in the Internet. We can't go and grab it all back. It's there. And they're subject to it for the rest of their lives through no fault of their own. And with that, I'd be happy to answer any questions. [LB728]

SENATOR ASHFORD: Senator Coash. [LB728]

SENATOR COASH: Thank you, Chairman Ashford. David, I just had a question about a part of the bill that allows the Attorney General's Office to pursue this. Just to clarify where it says, the victim or their legal guardian can...or the Attorney General, upon request of the victim or the legal guardian, can pursue on behalf of this person. Is it just them? Here's what I'm worried about. A victim out there says, you know what, I don't want to go through a trial. I've been through a horrible thing and I don't want to drag it out anymore. So they're not going to request the Attorney General to pursue it on their behalf. Can anybody else, or can...seems like the Attorney General can't do it without their request. But can anybody else say, you know, I want the AG to send this down the road? [LB728]

DAVID COOKSON: No, it's just the victim or their parents or legal guardians. And, of course, once they reach the age of majority, then their parents no longer have that ability. This is similar to what is provided for in the discrimination statutes under equal opportunity. The practical reality is the Attorney General's Office doesn't typically bring cases. But we sit as a safety net if there is a truly meritorious case that the person can't find counsel, where there is sort of the last resort or place of last resort. And that's the idea behind Section 7 in the bill. [LB728]

SENATOR COASH: Okay. Thank you. [LB728]

SENATOR ASHFORD: Senator Council. [LB728]

SENATOR COUNCIL: And just to follow up on Senator Coash's question, Mr. Cookson, I know the bill provides that if the parent or the victim or the guardian requests the

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Attorney General to pursue the civil litigation and a judgment is obtained, that the Attorney General's Office is entitled to recover the equivalent of attorneys fees and costs. But how do we account for the situation where...and I don't expect that most of the folks who engage in this kind of behavior have significant assets. What happens if these folks are judgment proof? [LB728]

DAVID COOKSON: Then, we're...all we have is a judgment against them that lasts as long as civil judgments last. There really...we encountered that some in a lot of different areas. I know HHS comes to the claims board with amounts that they have to write off because folks are judgment proof. I don't think there's anyway to get around that. [LB728]

SENATOR ASHFORD: David, I personally...I agree with the idea of using civil sanctions and, in cases like this. You would also, I mean without getting into the details of the bill, I assume you...the defendant could also be other conspirators in the...? [LB728]

DAVID COOKSON: Right. If you look... [LB728]

SENATOR ASHFORD: And that's in the definition or...? [LB728]

DAVID COOKSON: Well, in Section 3... [LB728]

SENATOR ASHFORD: I mean, if it's an international ring, which it may very well turn out to be. [LB728]

DAVID COOKSON: Section 3 allows you to not only get those who create, distribute, or actively acquire, but those who aid or assist and that's defined as...means helping, or help a principal in some appreciable manner with the creation, distribution, or active acquisition of a visual depiction. [LB728]

SENATOR ASHFORD: Right, and it just...I know I've introduced bills and not since I've been back but when I was here before on distribution of illegal firearms. And I know there was a lot of opposition to that kind of civil sanction, but it would seem to me, it's the same kind of insidiousness. I mean, where you have some person who is making money by illegally distributing firearms to kids and they're killing each other. It just seems like it's a...I'm not, I mean, I...there, you don't provide for civil sanctions in criminal type matters very often but when you do, it's got to be something that is, you know, it's kind of conspiratorial in nature and the instrumentality in this case, the video or the illegal firearm is...and it's a money making endeavor. Or it may not be in this case but it could be. I mean... [LB728]

DAVID COOKSON: Primarily in this case it isn't a money making environment. It's a... [LB728]

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SENATOR ASHFORD: But it can be, though. [LB728]

DAVID COOKSON: It can be and those are the people we really want to get after. [LB728]

SENATOR ASHFORD: Right. [LB728]

DAVID COOKSON: But these...what we've discovered is particularly in this dark subterranean world of file sharing. [LB728]

SENATOR ASHFORD: Right. [LB728]

DAVID COOKSON: These guys are constantly trying to one-up themselves by creating new and more revolting and disgusting images. And the problem is, it's...you have the creators, and then you have the distributors, and then you have the...not the casual viewer. There really isn't such a thing. You have guys with thousands of images on their computer of some of the most revolting things you can image. [LB728]

SENATOR ASHFORD: And it's terrible. And I grant you... [LB728]

DAVID COOKSON: And we really want to try to attack not just the creation, but the... [LB728]

SENATOR ASHFORD: But it's the same kind...I get that. I get that. [LB728]

DAVID COOKSON: I agree with you. I agree with you, it is the same. [LB728]

SENATOR ASHFORD: But all I'm saying...and it is awful and it's a plague and all of that and I just...we've got to stop. There are a lot of bad things going on out there. This is one of them. That's all I'm saying. [LB728]

DAVID COOKSON: Yeah, the real problem with this is it never goes away. These people carry this for the rest of their lives and every time these images pop up, it's like the constant pulling the scab off the wound. [LB728]

SENATOR ASHFORD: And all I'm saying is sometimes, once in a while, not all the time, this may very well be one of those times where the Attorney General should be involved in civil sanctions. [LB728]

DAVID COOKSON: And we agree. That's why we brought this. [LB728]

SENATOR ASHFORD: Right. Yeah. Senator Lathrop. [LB728]

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SENATOR LATHROP: I share the concern and the approach. I understand too. I just had a couple of questions about it and that was, whether it's a defense...how do you treat the guy who says, you're suing me but she told me she was 18. [LB728]

DAVID COOKSON: We would treat it, as you suggested, like a statutory rape situation. It's... [LB728]

SENATOR LATHROP: So they have to be...and I'm not sure that's clear in here. [LB728]

DAVID COOKSON: And it could be clarified. I think that's a good question. The other thing that is clarified in here is and this is consistent with our discussions about sexting in LB97. [LB728]

SENATOR LATHROP: I was going to ask you about that too. If this goes... [LB728]

DAVID COOKSON: If you're 16 or over... [LB728]

SENATOR LATHROP: Some girl takes a picture of herself, mails it to the boyfriend, and the boyfriend then sends it to one of his buddies, is he caught up in this? [LB728]

DAVID COOKSON: He could be, yes. Because if you will recall from our sexting discussion, the only exemption was between the boyfriend and the girlfriend. [LB728]

SENATOR LATHROP: Right. Right. [LB728]

DAVID COOKSON: We do provide that it doesn't create a cause of action if the participant is 16 years or older at the time the visual depiction was created and the participant willfully and voluntarily participated in the creation. It's a little bit... [LB728]

SENATOR LATHROP: If the participant willfully... [LB728]

DAVID COOKSON: And voluntarily. [LB728]

SENATOR LATHROP: See that, I don't know how you can, it's like trying to have it both ways though, isn't it? If you say, if somebody who is 14, can they willfully participate or voluntarily participate? [LB728]

DAVID COOKSON: No, and that's why we say 16 and older. It's not a cause of action if they're 16 and older, which is the age of consent, and they willfully and voluntarily do it. We're saying at 15, you can't consent. [LB728]

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SENATOR LATHROP: Okay. The other question I had and I think judging from Senator Lautenbaugh's response to it, he may have misunderstood what I was saying. I don't have a problem with the idea of a minimum \$150,000 liability. But here's the concern I have, the way it's written. If you don't have a physical injury or an emotional injury that requires treatment, I don't think you have any damages. [LB728]

SENATOR ASHFORD: Right. The way it's written is you have to have those. [LB728]

SENATOR LATHROP: And I think what you meant to say is you can get your physical injuries, your emotional injuries, or at a minimum, even if you had neither, you can get \$150,000. [LB728]

DAVID COOKSON: Right. And I think you're...that's a point that we probably need to clarify in the language. [LB728]

SENATOR LATHROP: Is there a federal statute that permits the same cause of action? [LB728]

DAVID COOKSON: I believe there is. [LB728]

SENATOR ASHFORD: This mysterious federal statute, we've got to find it. (Laughter) [LB728]

DAVID COOKSON: We'll find it and we'll get it... [LB728]

SENATOR LATHROP: There should be because I'm wondering if there is a federal cause of action if...I can't imagine the feds saying, you have to bring it in federal court. And then the question is whether or not we're just doing the same thing that's already in federal law. [LB728]

DAVID COOKSON: I will get you all copies of that but I believe that this is...you have to create a state cause of action in order to bring it in state court. It's my understanding in our discussions with the folks in Florida, that's why they adopted theirs. We really patterned it after Florida, but I know there is a...I had a notebook with all of the things and I should have brought it. I apologize. [LB728]

SENATOR LATHROP: Okay. That's fine. The other question I have is, you talked about the person that actively attempts to acquire this? [LB728]

DAVID COOKSON: Right. [LB728]

SENATOR LATHROP: That's a different class of person than somebody who trips into this on a Web site. [LB728]

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DAVID COOKSON: That's what we were trying to accomplish. We didn't want to get the guy who gets the pop-up that he didn't want that sends him to some Web site. We wanted the person who intentionally goes to a place and actively seeks this out. And based on our experience on how this information is traded, that's what happens. [LB728]

SENATOR LATHROP: Where is the distinction between the two? If you're bringing this cause of action, if I'm a plaintiff's lawyer, somebody comes in, how do I...how do I know whether this is a person who actively acquired it? And if he's on his computer, you could...he could conceivably be...it's not your intent to catch the guy or create a cause of action against the guy who tripped into the Web site. [LB728]

DAVID COOKSON: No. And typically the guy who trips into the Web site deletes or closes whatever he's looking at. The guys who are actively acquiring this, go to a, say, somewhere like it used to Kasaa or Grokster or Napster, types in a search term, finds 500 files of other users and starts to actively download those. There's a difference in your computer trail when you actively download something as opposed to it pops up on your screen by mistake. [LB728]

SENATOR LATHROP: Does that help you with the kid who passes along the pictures his girlfriend sent him? [LB728]

DAVID COOKSON: Yes. [LB728]

SENATOR LATHROP: I mean, there's people that you're after, there's people that you're after here and it's the people that deal in this kind of stuff. [LB728]

DAVID COOKSON: That knowingly actively share this information with other... [LB728]

SENATOR LATHROP: And I'm not sure that the bill as written...I like the idea, I like the concept, but if you're just trying to get after the professional grade, maybe that's not the right term, but the guy who does this... [LB728]

DAVID COOKSON: Right. What we're trying to get after the guys that we prosecute almost on a daily basis now, who have downloaded hundreds of images of child pornography. What we're trying to do is give...empower those victims to try to (1) recover for the damage that's caused to them, and to a certain extent act as a deterrent to those who might be on the border of deciding to start actively trying acquire this information. And certainly... [LB728]

SENATOR LATHROP: And that may be something else that needs to be tweaked because I don't think that's evident, what actively acquired could be. I'm thinking of a

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sporting goods store that somebody typed the name of the sporting goods store in and ended up in this site and they're going, holy cow. Right? [LB728]

DAVID COOKSON: Well, the most common example is if you wanted to get to the White House's Web site, it used to be...you had to be very careful because whitehouse.gov is the official site and whitehouse.com is a porn site. [LB728]

SENATOR LATHROP: Exactly. [LB728]

DAVID COOKSON: And again, we can work with you to work on the language. [LB728]

SENATOR ASHFORD: Thanks, David. Any other proponents? Opponents? Do we have any neutral or any other opponents? [LB728]

JOHN LINDSAY: Senator Ashford, I apologize, I'm a proponent. [LB728]

SENATOR ASHFORD: Oh, you're proponent? [LB728]

JOHN LINDSAY: Yes. [LB728]

SENATOR ASHFORD: Your time has elapsed. (Laughter) Okay. [LB728]

JOHN LINDSAY: Senator Ashford and members of the committee, for the record, my name is John Lindsay, L-i-n-d-s-a-y, appearing on behalf of the Nebraska Association of Trial Attorneys. I should probably first apologize to Senator Lautenbaugh for supporting one of his bills. (Laughter) [LB728]

SENATOR ASHFORD: Sir, it's duly noted. [LB728]

JOHN LINDSAY: Conceptually, we agree with this. We...some of the concerns have already been raised by Senator Lathrop, Senator Ashford, Senator Council, some of the drafting issues. Conceptually, we support that. We have, and I apologize, we have a couple of attorneys who are looking at trying to have some suggestions, that when they have those suggestions we'll share with Senator Ashford, Senator Lautenbaugh, Mr. Cookson, for their review. But generally they fall within the categories that you talked about. Additional issues, for example, statute of limitations being at three years. It's kind of inconsistent with the structure we have now which is typically a four-year statute, concerns about when that kicks in. [LB728]

SENATOR ASHFORD: And that might be because it's a model act. [LB728]

JOHN LINDSAY: Right. Exactly. And then also concerned about whether we're inadvertently shutting off any common law remedies that...and what the interplay

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between those would be. And with the same concern with respect to damages and whether you can access them. And if, again, just like Senator...drafting issues, I think, as opposed to any conceptual issues. We support generally the bill and we will share that with you when I get it from the lawyers that are looking at it. [LB728]

SENATOR ASHFORD: Thank you, John. Any questions of Mr. Lindsay. Seeing none, thanks. Opponents? Neutral? Senator Lautenbaugh. [LB728]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman and members of the committee. I know this is what we always say, but this is also true in this case, we're happy to work to address any concerns you might have to improve this. It was nice seeing Mr. Lindsay here and I'm going to revel in this day, but... [LB728]

SENATOR ASHFORD: It is clear to me that when you get different sides on issues working together and with the willingness to make a bill better, which is what we do here in this committee, that tends to work better. [LB728]

SENATOR LAUTENBAUGH: Absolutely. [LB728]

SENATOR ASHFORD: So I appreciate your willingness to do that. Thanks. [LB728]

SENATOR LAUTENBAUGH: Absolutely. Thank you all. [LB728]

SENATOR ASHFORD: Thanks, David. Senator Fischer, is here. My goodness. I mean, great, welcome. It's just we don't see you very often. (Laughter) [LB824]

SENATOR FISCHER: Thank you. It's a pleasure to be here. [LB824]

SENATOR LATHROP: It's a pleasure to have her here. [LB824]

SENATOR ASHFORD: It is. That's where I was going. [LB824]

SENATOR FISCHER: That's where you were trying to go. I haven't been here for a couple of years. [LB824]

SENATOR ASHFORD: No. LB824. [LB824]

SENATOR FISCHER: Thank you, Chairman Ashford and members of the Judiciary Committee. For the record, my name is Deb Fischer, F-i-s-c-h-e-r, and I am the Senator representing the 43rd District in the Nebraska Unicameral. I appear before you today to present LB824. LB824 would reduce the frequency of jury pool refreshment in small counties. Existing law, Section 25-1628 requires counties with a population under 3,000 to refresh the jury pool every two years. Larger counties must do so annually. Because

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jury trials are infrequent in many smaller counties, this bill would allow counties with a population between 3,000 and 7,000 to refresh their jury pool every two years. Counties of less than 3,000 would refresh the jury pool when ordered by the district judge. Refreshing the jury pool or creating a master jury list is the process by which a new group of potential jurors is selected. The pool is created by combining lists of registered voters with lists of driver's licenses and state identification cardholders to eliminate duplicates. The list of proposed jurors is selected by applying a key number to the list. For example, if the number seven is drawn, the clerk of the district court starts with the seventh name and pulls every tenth name thereafter. LB824 was crafted based on findings from the Nebraska Association of County Officials which discovered that many of Nebraska's smaller counties had not held a jury trial in a number of years. NACO continued to study this issue and found that most counties of 3,000 to 7,000 typically did not have a jury trial every year. By extending the amount of time between creating new jury pools, counties could save taxpayer dollars. I would like to point out that counties could still refresh the jury pool as often as needed, but this bill just eliminates the requirement to do so every year. Thank you, Mr. Chairman. [LB824]

SENATOR ASHFORD: Thank you, Senator Fischer. Any questions? Good. Thank you. [LB824]

SENATOR FISCHER: Thank you. [LB824]

SENATOR ASHFORD: Any proponents? Yes. [LB824]

ELAINE MENZEL: (Exhibits 3 and 4) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Elaine Menzel, again, it's M-e-n-z-e-l. I'm here on behalf of Nebraska Association of County Officials and rather than be repetitive of what Senator Fischer said, I will defer most of my questions to the clerk of the district court that is here as well. I do want to note that I'm having passed out two handouts. One shows the populations of the Nebraska counties and it shows that there are 24 counties that are between the populations of 3,000 and 7,000, 26 that are under 3,000, and the remainder are above the 7,000 population threshold. And then the other document is a document...a letter from Thomas County Clerk that...one of the statements that I would ask that you please note is that it states that after visiting with our county attorney who has been in office since 1977 he does not recall the last time that they had a jury trial. So just to show you... [LB824]

SENATOR ASHFORD: Which county? I'm sorry. [LB824]

ELAINE MENZEL: Thomas County. [LB824]

SENATOR ASHFORD: Thomas...oh, I'm sorry. [LB824]

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ELAINE MENZEL: So if you have any questions, again, I would ask that you direct those to the clerk of the district court to follow. [LB824]

SENATOR ASHFORD: Thank you. Next testifier. [LB824]

JANET WIECHELMAN: (Exhibit 5) Good afternoon, Senators. My name is Janet Wiechelman, J-a-n-e-t W-i-e-c-h-e-l-m-a-n. I'm the clerk of district court for Cedar County and I'm also the legislative liaison for the Clerk of District Court Association. This legislation was brought on behalf of our association. We are in support of this legislation due to the fact of the cost that the counties could save in not having to complete this process either on an every year basis on yearly basis. I won't highlight a lot of the information that's in my testimony due to the fact that it's already been given by Senator Fischer. I do have to say also, I was contacted by two counties who are under 3,000 population. One clerk indicated that they haven't had a jury trial since 1987, and one county indicated in the last ten years, they have only had three jury trials. To give an idea about the cost that we could be saving is, I contacted MIPS who many counties contract with to do the process of combining the two lists and providing the key number names of the jurors. They indicated as a round number that a population of around 3,000, their process in doing it would be \$150. For a county around the population of 7,000, it would run around \$350.00. Now that is just the cost of producing the list. That does not include the cost of photocopying the three-page jury questionnaire form, it does not include the postage, it does not include itself all the time that is done by the personnel of the clerk of the district court office. Of course, this is a little bit if the county does the one-step or two-step process in finding prospective jurors. I would ask that the committee pass this on to the General floor. If anybody has any questions, I would be more than happy to answer them. [LB824]

SENATOR ASHFORD: Yes, Senator Council. [LB824]

SENATOR COUNCIL: Thank you, and thank you, Janet. So that I understand how to process, what is expected to occur? So in the rare instance that the county that had three jury trials in the last ten years, how would it work under the proposal? [LB824]

JANET WIECHELMAN: Under the proposal those counties under the 3,000, it would only be required to be completed upon an order of the court, district court. In cases right now, district court. I believe we would be willing to increase it also to a county court judge as they also give orders for jury trials. If in fact that legislation is passed, that district court clerk acting as a jury commissioner, in order to proceed the process through in order to get to having a juror for that particular jury trial, will have to do the one-step process, which allows that time as we have to elect jurors from the key number. What they do then is they have a certain amount that they send out the jury questionnaire form and also the jury summons, which means they send more than what they anticipate will actually be there. That eliminates the process of sending out all jury

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questionnaires to all select jurors. It just saves some time because it's a lot less in cost and it does kind of speed the process a little bit faster. [LB824]

SENATOR COUNCIL: Okay. And I appreciate the concern about the cost, the cost benefit analysis. But what I'm concerned about is, how do we assure that the judge triggers the request for refreshing. I mean, it has a jury trial scheduled, the list may not have been refreshed in nine years because you haven't had a jury trial in nine years. What...how do we assure that the judge then issues the order to refresh? Because what I'm concerned about, if the judge doesn't issue the order to refresh, you have to...you proceed to a jury trial and your jury pool is based on ten-year old data. [LB824]

JANET WIECHELMAN: What would happen actually in the process if, in fact, an order has been indicated a jury trial is needed, that clerk would then have the responsibility of contacting the Department of Motor Vehicle, receiving the list from them, and also contacting the Election Commissioner to receive the list from them, in which they then go to the process either through MIPS or however they collect to make one master jury list. Like I said, it's going to be a lot of work within a short period of time of doing it. That's why I've indicated that they'd have to complete the one-step process instead of the two-step process. [LB824]

SENATOR COUNCIL: Okay, because that's what I'm saying, is by order of the district court judge and what you just described is comforting to me, but it's not consistent with what the legislation says. It's comforting to me that if the clerk receives word that there's going to be a jury trial coming up, that they're going to take it upon themselves to get the data and do the list combination, but the bill says what triggers it is an order of the district court. [LB824]

JANET WIECHELMAN: I understand your concern. I guess if we'd like to look at different language, we'd be more than willing to work and find something that's more applicable. We did have our concerns when we brought this issue as far as finding a trigger date that would require those jury commissioners to start that process and that the process could be done in a timely manner. [LB824]

SENATOR COUNCIL: Okay. Could it be just simply, I mean, the district court judge notifying of the...or, you know, requesting the impaneling of the jury? I'm just trying to see something other than an order of the court that you may or may not get and receive. [LB824]

JANET WIECHELMAN: Well, in most of those counties the jury commissioner is the clerk of district court. The only instance may be where it's a county court and the county court judge has requested a jury where the information may not be given to the district court clerk timely from there. [LB824]

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SENATOR COUNCIL: I'm just trying to figure out some way to tighten that up because I know that you'll get the clerk/jury commissioner is going to get notified that you need to go through the jury pool process. And that would trigger some refreshing of the list, particularly if you hadn't done it. But the way this legislation reads, that is only done upon order of the court. So I just, we have to figure out a way to make the language match with what the practice is actually going to be, what would primarily be. And we already identified that we would have to add county courts. [LB824]

JANET WIECHELMAN: Right. [LB824]

SENATOR COUNCIL: So you'll have to at least...that amendment will have to be made and let's see if we can come up with a way to trigger it without a formal written order. [LB824]

JANET WIECHELMAN: I agree to that. [LB824]

SENATOR COUNCIL: Okay. [LB824]

JANET WIECHELMAN: Yeah, we would be more than willing to work at some finding appropriate language for that. We would agree to that. [LB824]

SENATOR ASHFORD: Senator Rogert. [LB824]

SENATOR ROBERT: What's the time frame to refresh a jury list for some of these small counties? [LB824]

JANET WIECHELMAN: For the small county right now the only provision is those counties under the population of 3,000, they are required to replenish it every, every other year required. [LB824]

SENATOR ROBERT: I mean, how long does it take you to do it? [LB824]

JANET WIECHELMAN: How long does it take to do it? It depends on some counties. Some counties who have MIPS do that process of making the master jury list. I believe from my talks with the clerks, they're just receiving the list now and the list was just made available to MIPS in December. The process now, once that list has been made and those jurors selected by that key number have been given to the clerk, depending again, if it's a one-step or two-step. One-step, again, is sending out the jury summons and a questionnaire in the same process. Two-step is when the clerk sends out all questionnaires to all those individuals chosen on the key number. That does take a longer process because such as Cedar County where we have about 8,200 in our population, you figure 10 percent, we're sending about 800 and some jury questionnaire forms out. And there's a long process because you're waiting for those all to be

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returned. And, of course, there are some individuals who maybe don't complete it correctly and so we have to resend them back out. It would be the same issue on the one-step if a juror did not complete the questionnaire properly. [LB824]

SENATOR ROBERT: Well, my question is, say, there hasn't been a jury trial in Wheeler County since 2000. All of a sudden now there's a request for a jury trial. The judge feels there's a necessity to refresh the list. Is this going to delay a trial for a year? [LB824]

JANET WIECHELMAN: No. [LB824]

SENATOR ROBERT: A couple months? [LB824]

JANET WIECHELMAN: It probably will require those counties to contract with MIPS or find an appropriate company who would be willing to do this. They can do it by computer. Therefore, it's done a lot faster and can get that list. I believe if a contact was made with MIPS, they could have it within a couple of weeks once they receive both of those lists from the Election Commissioner and Department of Motor Vehicle. From there, the clerk is going to have to timely send those jury questionnaire forms out and the summons out to those selected individuals who are then drawn from the key number. [LB824]

SENATOR ROBERT: Okay. [LB824]

SENATOR ASHFORD: Janet, thanks for coming back again. You've been here a couple of times, haven't you? [LB824]

JANET WIECHELMAN: Yes, I have. [LB824]

SENATOR ASHFORD: Can you just...do you have in your association, do you have the number of jury trials per county in the information? [LB824]

JANET WIECHELMAN: I had requested that information from the clerks of district court this week. Due to the fact I didn't have a complete enough result... [LB824]

SENATOR ASHFORD: I don't need it today, but, I mean, could you get me that information by county? [LB824]

JANET WIECHELMAN: Yes, I will. [LB824]

SENATOR ASHFORD: And could you break it down between civil and criminal? Can they do that, or no? [LB824]

JANET WIECHELMAN: What I'd ask them to do is simply to give me a list of jury trials

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for district and county court and also grand juries. [LB824]

SENATOR ASHFORD: Okay. That should do. Thanks a lot for doing that. [LB824]

JANET WIECHELMAN: I'll provide that information as soon as I get it. [LB824]

SENATOR ASHFORD: Okay. Thanks, Janet. [LB824]

JANET WIECHELMAN: Thank you. [LB824]

SENATOR ASHFORD: Any other proponents? [LB824]

ELIZABETH NEELEY: (Exhibits 6 and 7) Good afternoon, my name is Elizabeth Neeley, N-e-e-l-e-y. I'm the director of Nebraska Minority Justice Committee. And we were the ones that originally asked for the refreshment in time frame and so I thought I would come here and comment on that today. The jury system is a fundamental element of our justice system and an important civic responsibility. Few activities in our civic life involve as many people, have as great an effect, or give citizens such direct involvement with our democracy as jury service. The opportunity to perform the civic duty of serving on a jury should be equally bestowed upon all citizens. For the past few years, our committee has been involved in several research and policy initiatives to ensure that jury pools are representative of the communities that they serve. And an important way to ensure that, is to reflect...that jury pools reflect the growing diversity of our state is to require regular refreshment of jury pools. Recognizing that smaller counties have juries less frequently, we support different time lines for refreshment for smaller counties. Our concern is, however, exactly what Senator Council has described, what is the trigger for that? And we respectfully request the Judiciary Committee consider adopting language that would require counties with a population of less than 3,000 inhabitants to produce a refreshed master list every five years. We've talked with Senator Fischer about this in disseminating some draft language for that. Of the 25 counties in Nebraska, it's depending on which census numbers you use, sometimes 25, sometimes 26, with populations of less than 3,000, 12 have had jury trials in the last five years. Many of them have had multiple trials. So although they are small, these counties still are convening juries for the administration of justice. And if you would like that information from the Court Administrator's Office, they can also provide that to you, civil and criminal, over however many years you'd like. During the original task force study, we found that there were many counties in Nebraska that had not refreshed their jury pool list from anywhere from 15 to 20 years. Given the significant demographic change in our state, these counties were not producing juries that were representative of the communities that they serve. Because the refreshment of jury pools is a function of the clerk of the district court, rather than judges, it is our belief that few judges who often serve multiple counties are even aware of when their jury pool was last refreshed. We fear that without a specific time frame, the duty of refreshing jury pools may be

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overlooked or neglected, as it had been in the past, in the interest of saving a minimal amount of funds. So I'd be happy to answer any questions. [LB824]

SENATOR ASHFORD: You do an incredible amount of work, Liz. [LB824]

ELIZABETH NEELEY: Thanks. [LB824]

SENATOR ASHFORD: How do you do all this work all the time? [LB824]

ELIZABETH NEELEY: I don't sleep. (Laugh) [LB824]

SENATOR ASHFORD: Really good work. You do very good work. [LB824]

ELIZABETH NEELEY: Thanks. [LB824]

SENATOR ASHFORD: And I'm sure you're probably not told that enough, but, or ever. [LB824]

ELIZABETH NEELEY: It's nice to hear. Thank you very much. [LB824]

SENATOR ASHFORD: Yes, Senator Lautenbaugh. [LB824]

SENATOR LAUTENBAUGH: I don't know if you're the right person to ask this question of, and thank you, Senator Ashford. And again, I'm asking the rest of the committee because I don't do criminal work, but what would be wrong with a system, some of these sparser populated counties if the jury pool or whatever was updated as needed? I mean, you don't...jury trials don't just materialize. You usually have a month, two months, ten months, twelve months leave time if you know it's coming. Don't you usually demand...in civil cases you demand a jury at the outset. You can waive it, but in county court you have to demand it. District court, I guess you get it automatically unless it's waived in civil suit. Criminal cases, I guess I don't know when you actually request a jury trial but it's usually not on the eve of trial, is it? [LB824]

SENATOR LATHROP: You have a constitutional right to it so it probably happens like the civil case automatically. [LB824]

SENATOR ASHFORD: Yeah, and I wonder, yeah... [LB824]

SENATOR LAUTENBAUGH: So what would be the harm in a requirement that you do this as needed if it really comes up so rarely and it can be done in a month or two? [LB824]

ELIZABETH NEELEY: I think it should be carefully worded so that the "as needed"

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doesn't trigger it every single time. So, for example, if you were under 3,000 and you had a jury trial, you hadn't had one for ten years but then you had another one six months later, it would not require you to do that again. [LB824]

SENATOR LAUTENBAUGH: That would make perfect sense because you don't want to have to do it every time. But maybe within so many years it's good, but you don't do it automatically unless you have one. [LB824]

SENATOR LATHROP: The one thing that occurs to me looking at this list is that if you're not getting jury trials very often like...is it Thomas County? Well, take Arthur County. There's 338 people there, and I can't imagine that when you have to update it it takes very long to do. (Laughter) [LB824]

ELIZABETH NEELEY: It's a very minimal amount. It's a per name charge, yeah. [LB824]

SENATOR LAUTENBAUGH: I guess my preference would be that they never do it automatically if they don't have to, considering how fast we can do it, especially in the smaller counties. [LB824]

ELIZABETH NEELEY: I think there needs to be some trigger. Another thing that we found when talking to the clerks of the district court is it's very uncomfortable for them to call deceased jurors. I mean that happens if you're not regularly refreshing, is that you're contacting people and asking them... [LB824]

SENATOR ASHFORD: They probably are hard to get ahold of, I suppose. [LB824]

ELIZABETH NEELEY: Yeah, they're hard to get ahold of. (Laughter) [LB824]

SENATOR COUNCIL: And, you know, I appreciate Senator Lautenbaugh's question because it kind of gets back to my question. I mean, I appreciate and understand the concern of the smaller counties, but the question of what triggers it, and as you indicated in response to Senator Lautenbaugh, you don't want them to refresh it, you know, every time a jury trial comes up. But it has to be some triggering event and someone...you were mentioning and that was a concern I had, if you have a district judge that covers four counties, how do they know whether or not the jury list has been refreshed? So I'm thinking maybe something that says in those counties with a population of less than 3,000, at least...I mean if you're going to have some specific, at least once every five calendar years unless there hasn't been a jury trial...(laugh) you see, unless there hasn't been a jury trial within...but then it would have to come at some point in time after that. But I absolutely understand and appreciate the concern. I mean, you don't want to have to go through that...even if your demographics are changing, you don't want to have to go through it if you're not having jury trials. But if there's the

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possibility of a jury trial, you want your jury list to as fairly and as accurately as possible reflect the population of the county. Maybe we can do something working with Senator Fischer that looks at the amendment. And did you say that that it has been discussed with...? [LB824]

ELIZABETH NEELEY: I believe Senator Fischer was notified about the possibility of doing... [LB824]

SENATOR COUNCIL: So, you know, the possibility that maybe at least once every five calendar years would...because the interesting thing about that is, if you say at least once every five calendar years, if for some reason Garfield County starts having a bunch of jury trials, you're still not required to update the jury list except once every five years, so. Okay, thank you. [LB824]

ELIZABETH NEELEY: Thanks. [LB824]

SENATOR ASHFORD: Thanks, Liz. I'm sorry, Senator...Liz, we have one more question here. [LB824]

SENATOR COASH: Thank you, Chairman Ashford. Liz, in your testimony you mentioned a study by the task force in 2002 and you said you found many counties that hadn't done it 15 to 20 years. [LB824]

ELIZABETH NEELEY: Right. And... [LB824]

SENATOR COASH: So these counties were breaking the law? [LB824]

ELIZABETH NEELEY: There was no law at that time. [LB824]

SENATOR COASH: Okay. [LB824]

ELIZABETH NEELEY: Before 2002 there was no requirement for periodic refreshment. And so there were even medium and large-sized counties that were not regularly refreshing their jury pools. [LB824]

SENATOR COASH: Okay. So I was trying to get at, why would they...because they forgot or...? [LB824]

ELIZABETH NEELEY: I don't think... [LB824]

SENATOR COASH: But prior to 2002 they weren't required to, so now they were but they're doing it more frequently than they need to. I get it. Thank you. [LB824]

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SENATOR ASHFORD: Thanks. Do you have another question. I'm sorry, Senator Lautenbaugh has another...we just kind of like, you know, get up and sit down. [LB824]

SENATOR LAUTENBAUGH: Actually I was going to withdraw it. We're actually starting to...it's seems like we're Execing at this point in committee and I apologize. [LB824]

SENATOR ASHFORD: That's good. This is interesting stuff and... [LB824]

SENATOR LAUTENBAUGH: Maybe we could just say you can't use a jury list that's more than five years old, so that if it's stale you have to refresh, and then if the next one comes along, it's not. [LB824]

SENATOR COUNCIL: Yeah, that's a good idea. [LB824]

SENATOR ASHFORD: It is a good idea. Thanks. [LB824]

SENATOR LAUTENBAUGH: Should we go into Exec then? [LB824]

SENATOR ASHFORD: Well, wait just one second. (Laughter) We'll count to ten and then you can leave. All right. Thanks. [LB824]

ELIZABETH NEELEY: Okay. [LB824]

SENATOR ASHFORD: Any other proponents? Opponents? Neutrals? Senator Fischer. [LB824]

SENATOR FISCHER: Thank you, Mr. Chairman and members. I think the committee heard some good testimony and possibilities in amending the bill and I would be willing to work with you on that. Thank you. [LB824]

SENATOR ASHFORD: Thank you, and thanks for your presentation. Okay, that ends the hearings for the day. [LB824]