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LB 228

distinguishes on the basis of age on another. And those kinds of classifications are clearly unconstitutional. We also had an application of this usage in a case regarding the Cochran brothers about two and a half years ago, and the two gentlemen were jailed for roughly 60 days while they made application to the Federal Court. The Federal Court said that Nebraska statute was unacceptable because it did not have adequate due process guarantees. Judge Urbom wrote those guarantees in the Cochran decision and those guarantees now appear in the bill on pages 4 and 5. The bill accomplishes this, it sets, number one, the standard under which you can jail somebody for being a material witness, and that standard is when a judge determines in the exercise of his discretion that such release will not reasonably assure that the witness will appear and testify at a trial. Secondly, it indicates the due process guarantees for the hearing which a material witness has available to them before they are jailed. Thirdly, it allows for prospect of a bond. And, fourthly, it creates a series of restrictive or least restrictive alternatives that a judge could apply. That means that before they can be jailed, the judge should consider placing the person in the custody of a designated person or organization, or that the judge should consider placing restrictions on travel and association, or place of abode, or that the judge may require an execution...the execution rather of an appearance bond. All of those should be considered prior to the jailing of a person to serve as a material witness. Now if none of those other circumstances will apply, then the judge is free to go ahead after there has been a hearing and jail the material witness. What this does then is take our decades old material witness statute and solve the constitutional flaws that exist. It has been reported out by the Judiciary Committee. It is approved by the Nebraska State Bar Association. It is the recommendation of the LR 154 Committee and I would move its adoption by the body.

SENATOR DWORAK PRESIDING

SENATOR DWORAK: The motion is to advance to E & R Initial. All those in favor say aye.

CLERK: Senator Dworak voting aye.

SENATOR DWORAK: Have you all voted? The sooner we vote we can get on with....

SENATOR LANDIS: I wouldn't want to be the first one today, and I have been sitting in my seat quietly voting on everybody else's bill.....(interruption).