



The Florida Senate

Interim Project Report 2002-139

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Committee on Judiciary

Senator Locke Burt, Chairman

ANALYSIS OF THE JURY POOL SELECTION PROCESS

SUMMARY

The jury source list consisting of licensed drivers and identification cardholders provided by the Department of Highway Safety and Motor Vehicles as prescribed in s. 40.01, F.S., should be retained. There is a lack of strong empirical data or anecdotal evidence to support a return to a list based on registered voters. Although there is some tangible data reflecting minimal increased costs possibly resulting from lower summoning yields, these costs should be lowered upon the department's implementation of county of residence information in its database. These costs also may be lowered by updating the source list on a more frequent basis.

Accordingly, it is recommended that s. 40.022, F.S., be amended to require the department to provide the clerks of court with source lists on a monthly basis. It is also recommended that the department be directed to change the application, renewal, and change of address forms for driver's licenses and identification cards to identify the person's county of residence.

Finally, to promote timely reporting of address and name changes to the department, it is recommended that the \$10 fee charged for a replacement license, as prescribed by s. 322.17(2), F.S., be eliminated. The fee should only be charged when a person fails to notify the department of a name or address change within the time set forth in s. 322.19, F.S., which is currently 10 days. It is further recommended that this 10 day period to report name and address changes be changed so that more time is available before a fee will be assessed.

BACKGROUND

Legislative History

Prior to 1991, Florida law required jurors to be at least 18 years old, a citizen of Florida, and a registered voter of the county in which they were summoned for jury duty. In 1991, chapter 91-235, L.O.F., was enacted to amend s. 40.01, F.S., so that now jurors must be at

least 18 years old, citizens of the United States, legal residents of Florida and their respective counties, and possess a driver's license or identification card issued by the Department of Highway Safety and Motor Vehicles (DHSMV.) Additionally, pursuant to s. 40.011, F.S., individuals who do not have a driver's license or identification card, but who otherwise meet the qualifications of s. 40.01, F.S., can execute an affidavit expressing their desire to serve as jurors.

Section 40.011, F.S., also enacted in 1991 by ch. 91-235, L.O.F., requires the DHSMV to maintain a database of each driver or holder of an identification card who meets the criteria for jury duty set forth in s. 40.01, F.S. Effective January 1, 1992, the DHSMV was required to begin the process of establishing the jury list database, which was to be operational by January 1, 1998. Since 1998, pursuant to s. 40.011, F.S., the DHSMV has been required to provide the jury list to the clerk of the circuit court in each county on an annual basis.

Once the clerk receives the jury list from the DHSMV, the clerk adds to the list, pursuant to s. 40.022, F.S., any person who has executed an affidavit in accordance with s. 40.011, F.S. The clerk, on a monthly basis, also cross-checks the list provided by the DHSMV with other sources and purges from the list those persons who have died and those who are statutorily disqualified from serving as jurors (i.e., convicted felons who have not had their civil rights restored and people who have been adjudicated mentally incompetent.)

There were two primary reasons for changing the jury source list from registered voters to licensed drivers. One reason pertained to voter registration. A 1989 study on voter registration, which was commissioned by the Florida Department of State, indicated that approximately 20% of unregistered voters cited potential jury service as the reason for not registering. *Voter Participation in Florida: A Study of Voter*

Registration and Voter Turnout, Gatlin (January 3, 1989).

The other reason for changing the jury source list was to obtain a more diverse pool of jurors that more accurately reflected the population. In 1990, the year before the source list was changed, non-white voters comprised 10% of all registered voters, while making up 15% of the state's total population. At the time, there was no empirical data to support the claim that juries comprised of registered voters were not accurate representations of the population. However, there was a great deal of anecdotal evidence that minorities and younger people were not proportionately represented on most juries. For example, the Florida Supreme Court Racial and Ethnic Bias Study Commission reported in 1991 that a survey it issued to criminal defense attorneys found that 85% of those surveyed felt that minorities were underrepresented on criminal juries relative to their representation in the community.

Legal Background

The tradition of trial by jury, whether in criminal or civil proceedings, necessarily contemplates an impartial jury drawn from a cross-section of the community in conformance with the Sixth Amendment of the U. S. Constitution, as applied to the states via the Fourteenth Amendment of the U. S. Constitution. *See State v. Silva*, 259 So.2d 153, 160 (Fla. 1972). This does not mean that every jury must contain representatives of all the racial, ethnic, economic, social, religious, political and geographical groups of the community, but it does mean that prospective jurors must be selected at random without systematic and intentional exclusion of any of these groups. *Id.*; *Taylor v. Louisiana*, 419 U.S. 522, 42 L.Ed. 2d 690, 95 S.Ct. 692 (1975). Additionally, the jury pool need not be a perfect mirror of the community nor is it required to reflect accurately the proportionate strength of every identifiable group in the community. *See Thomas v. State*, 223 So.2d 318, 322 (Fla. 1969).¹ In fact, intentionally composing jury lists on a basis of proportional representation of classes of groups is invalid. *See Porter v. State*, 160 So.2d 104 (Fla. 1963), *cert. denied* 379 U.S. 849, 13 L.Ed. 2d 52, 85 S.Ct. 90 (1964).

Selection of trial jurors and grand jurors from voter registration lists is constitutional, as long as the process does not systematically and intentionally exclude members of groups or classes. *See Valle v. State*, 474 So.2d 796 (Fla. 1985)²; *Johnson v. State*, 660 So.2d 648, 661 (Fla. 1995)[two African-American jury candidates out of 160 candidates in the jury pool valid since it was un rebutted that the pool was randomly

generated by computer.] The use of registered voters is constitutional even when it results in certain racial, ethnic, or gender groups being underrepresented. *See Hendrix v. State*, 637 So.2d 916, 920 (Fla. 1994)[minor variations between percentage of African-American residents and African-American registered voters does not equate to underrepresentation]; *Marshall v. Holmes*, 365 F.Supp. 613, (N.D. Fla. 1973)[no constitutional underrepresentation where 25% of county population was African-American, yet only 15% of the venire was African-American.] To constitute a constitutional violation, the group must be *substantially* underrepresented. *See Duren v. Missouri*, 439 U.S. 357, 58 L.Ed.2d 579, 99 S.Ct. 664, 669 [15% of jury pools were female, yet 85% of the community was female, thus constituting a substantial underrepresentation in violation of the Sixth Amendment right to a fair cross-section of the community.]

As of this date, there have been no court decisions construing the constitutionality of using licensed drivers for the jury source list.

Present Situation

Several issues have arisen since the implementation of the DHSMV jury source list in 1998. The problems reportedly are: out-of-county residents on the list; incorrect addresses on the list; a greater number of jurors who are convicted felons; and "low quality" jurors.

One of the problems has centered around the county of residence of the potential juror. The DHSMV database identifies the residence of licensed drivers and identification card holders based upon zip codes and not county of residence. In many instances, zip codes cross county lines. As a result, the clerks of court report that, compared to the jury pool drawn from registered voters, more of the DHSMV source list jurors are not eligible for jury duty because they do not reside in the county where they have been summoned to serve.

Another purported problem with the DHSMV source list is a lower summoning yield due to a higher number of incorrect addresses. The summoning yield is the percentage of citizens available to serve as jurors after eliminating all of those who are disqualified, exempted, excused, and granted postponements. The summoning yield also reflects those jurors who did not receive a summons and those who did receive a summons but failed to report. Some clerks of court report that the DHSMV source list contains so many incorrect addresses that they now summon twice as many

potential jurors as they summoned under the registered voter source list. Two counties report that this has resulted in increased postage costs of more than \$10,000 for each county.

Another alleged problem with the DHSMV source list is the contention by some parties that the quality of jurors has declined. Several state attorneys and judges have reported a higher incidence of convicted felons being summoned, with some of these statutorily ineligible individuals actually serving on a jury. Many state attorneys and judges also have reported more potential jurors having arrest records. There have been some reported cases, both criminal and civil, where convictions and final judgments have been reversed on appeal because jurors did not disclose personal convictions or arrest histories.

State attorneys, judges, and civil trial lawyers also have reported that more jurors appear to be less interested in fulfilling their civic duty. These sources contend that, compared to when the jury pool was drawn from registered voters, the current pool of jurors pay less attention to the proceedings and have less respect for the court system.

In May of 2001, the Jury Innovations Committee, a committee appointed by the Florida Supreme Court in November of 1999, issued its final report on Florida's current jury system.³ The committee studied the jury source list and recommended no change in the source. Although the committee was informed of, and acknowledged, problems with non-county residents appearing on the DHSMV source list, the committee was of the opinion that lower summoning yields were not solely caused by this factor as summoning yields are dependent on many other factors that are controlled by the court. More specifically, juror excusals, postponements and failures to appear have a large impact on the summoning yield and the committee thought these items could be better addressed by the court.

Accordingly, the Jury Innovations Committee recommended the DHSMV include the county of residence on its driver's license application form. The committee also recommended that s. 322.17(2), F.S., be amended to delete the \$10 fee a licensee must pay for a replacement license due to changes in name or address as the committee viewed the fee as discouraging some persons from keeping the information on their license current.

During the 2001 Legislative session, Senate Bill 1658 was filed and it would have changed the source list back to registered voters. The bill passed favorably out of the Senate Judiciary Committee but subsequently died on calendar. There was no House companion to SB 1658.

METHODOLOGY

Staff of the Judiciary Committee formulated a questionnaire that was circulated to numerous interested parties. The questionnaire sought to elicit information related to problems with the DHSMV source list, problems with the registered voter source list, preferred choice of source list, recommended changes to the source list, fiscal impact, and miscellaneous comments. The respondents were also requested to provide, where available, data in support of their responses. The questionnaire was distributed to each of Florida's 67 supervisors of elections, each of the 67 clerks of court (via the Florida Association of Court Clerks and Comptroller), each of the 20 state attorneys (via the Florida Prosecuting Attorneys Association), each of the 20 public defenders (via the Florida Public Defender Association), and the Academy of Florida Trial Lawyers and the Florida Defense Lawyers Association for circulation to their respective members.

Staff of the Judiciary Committee also held meetings and communicated with representatives of the Office of the State Court Administrator (OSCA), the Second Judicial Circuit (Leon County), the Florida Association of Court Clerks and Comptroller, the Department of State (Division of Elections) and the DHSMV.

Also, staff of the Judiciary Committee reviewed numerous newspaper and journal articles that focused on jury source lists. Legal research was performed on the constitutional aspects of jury source lists. Additionally, staff reviewed other states' laws on jury source lists.

Finally, staff reviewed state population and voter registration figures, both actual and estimated, from 1990 through 2001.

FINDINGS

Jury Summoning Yield, Incorrect Addresses, and Non-County Residents

In an article dated July 18, 2001, *The News Press* of Ft. Myers reported that the Lee County Circuit Court in

1996 summoned 65,256 people for jury duty from the registered voter source list. In 2000, using the DHSMV source list, the county summoned 88,411 people--about 214 people per trial. That is an increase of about 35 percent, which has added roughly \$10,000 to the cost of issuing summonses. Similarly, in an article dated November 8, 1998, the *Palm Beach Post* reported that the cost of summoning jurors in Palm Beach County had risen \$10,000 since the switch to the DHSMV source list. The article quoted the jury manager for Palm Beach County, who attributed the increased costs to a 15% lower summons response rate.

Statewide, according to figures from the Office of the State Court Administrator, the average summoning yield using the registered voter source list was 34.8% for the three years before the list was changed. Since the DHSMV source list has been in effect, the summoning yield has averaged 30.1%. Statewide, this translates to a 4.7% drop.

Likewise, on a statewide basis there has been an approximate 26% increase in the number of jury summonses issued since the implementation of the DHSMV source list. The average number of jurors summoned statewide for the three years before the list was changed was 1,344,540 per year. Since the DHSMV source list has been in effect, the average number of jurors summoned statewide has been 1,882,014 per year. This equates to a statewide annual increase of \$182,741 in postage costs. However, it is unknown whether the increased number of summonses and the increased postage costs are directly related to the DHSMV source list, or whether they are related to other causes such as increased numbers of postponements, excusals failures to appear and potential trials.

The decreased summoning yield and increased issuance of jury summons has been attributed by some parties to the DHSMV source list containing incorrect addresses and non-county residents. Incorrect addresses often result from people moving during the year or people having different addresses on their driver's license as opposed to their actual residence address. Pursuant to s. 40.011, F.S., the DHSMV is only required to provide the source list to the clerks on an annual basis, which, according to the DHSMV, may account for a portion of the incorrect addresses. A large percentage of court clerks indicated they would like to receive the DHSMV list more frequently, either on a quarterly or monthly basis. According to the DHSMV the list can be supplied on a more frequent basis without any fiscal impact and the DHSMV currently provides the list

more frequently to five clerks.

Regarding non-county residents being on the jury source list, the DHSMV acknowledges that this is a problem because applicants for driver's licenses and identification cards report their addresses by stating what city they live in and their zip codes, which cross county lines, but do not identify their county of residence. In addressing the issue, the DHSMV has tried many different versions of computer software, met with officials of the United States Post Office, and physically reviewed census accounts in conjunction with zip codes. None of these efforts have met with any success.⁴

According to the DHSMV, the only way to successfully correct this problem is to reprogram the database and collect the residency information from each individual. At last accounting, the DHSMV database had 15,451,277 people who must be screened in order to compose the jury source lists for each clerk.⁵ Personal contact with each person equates to \$3,800,000 in mailing costs. Once collected, data entry would begin and could be accomplished in one year at a personnel cost of \$1,245,959. Computer programming costs would total \$8,000. The total projected cost to accomplish the task in a one year time frame would be \$5,053,959. Alternatively, if this task is phased in and only performed when individuals renew their licenses or update their address changes with the DHSMV, the only cost would be the \$8,000 for computer programming.

Changing the source list to registered voters would decrease the problem of summoning non-county residents as that issue is resolved when a person registers to vote and must indicate in which county he or she lives. Obviously, this would eliminate the need to spend any money to correct the problem with the DHSMV source list. Although no figures were provided, the clerks and election supervisors reported that changing the source list to registered voters would result in very minimal costs, if any at all. Additionally, many clerks indicated the switch could result in an overall lowering of costs as fewer jurors would have to be summoned.

The responses to the staff questionnaire contain little, if any, empirical evidence in support of, or to refute, the respondents' positions. Although there are reports that mailing costs have increased due to summoning more jurors, none of the respondents provided actual dollar amounts in their answers to the questionnaire. Follow-up contact failed to yield any concrete data as the

response most given was that the costs were minimal. Almost all of the responses were based on anecdotal evidence.

Those in favor of retaining the DHSMV source list, with or without modifications to the list, comprise 62% of all respondents. Broken down, 100% of the public defenders, 75% of plaintiff-oriented civil trial lawyers, 68% of election supervisors, and 48% of court clerks are in favor of the DHSMV list.

Only 32% of all respondents are in favor of returning the source list to registered voters. The state attorneys are unanimously in favor of returning the source list to registered voters, while only 47% of the clerks, 22% of plaintiff-oriented civil trial lawyers, and 5% of the election supervisors are in favor of returning to registered voters.

Six percent (6%) of all respondents did not take a position on which source list they preferred, or they suggested other sources. Five percent (5%) of the clerks reported no preference, while 27% of the supervisors took no position.

Voter Registration and Diversity of Jury Pool⁶

The reasons for changing the jury source list in 1991 were to diversify the jury pool and promote voter registration. Since the DHSMV source list went into operation in 1998, there has been an increase in voter registration. According to the Department of State, Division of Elections, the total number of registered voters has increased by over 780,000 voters since the new source list was implemented in 1998⁷. However, according to the Division of Elections, there have been no studies conducted to determine whether the change in the juror source list has contributed to the increase in voter registration.

Those opposed to using voter registration as the jury source list--election supervisors, public defenders, some court clerks, and some civil trial lawyers--contend it will be harmful to voter registration. Most of the election supervisors reported that, prior to the change in the juror source list, people would not register to vote to avoid jury duty or would have their names removed from the voter rolls after serving jury duty. They are fearful of this activity occurring again. Several elections supervisors indicated that people will give up the right to vote to avoid jury duty, but people will not give up their driving privileges to avoid jury duty. This is anecdotal evidence and there is no empirical evidence to support or refute this assertion.

When the Legislature was considering changing the source list, 1990 was the last year for which voter registration and census figures were available. In 1990, non-white voters comprised only 10% of all registered voters, yet made up 15% of the population. However, in 2000, non-white voters comprised 22% of all registered voters, yet made up only 16% of the total population. Overall, voter registration has increased from 47% of the total population (60% of the 18 and over population) in 1990 to 55% of the total population (71% of the 18 and over population) in 2000. Accordingly, from a statewide perspective, registered voters are now more evenly representative of the statewide community.⁸

As of this date, there has been only one study that has specifically looked at the impact of the change in the jury source list on the composition of jury pools. In 1998, the *Palm Beach Post* conducted a random sampling of jury pools summoned before and after the implementation of the DHSMV source list.⁹ The *Palm Beach Post* reported that, overall, the demographics of Palm Beach County's average jury candidate have not changed much as a result of the jury source list switch.

- Prior to the switch, 90.1% of juror candidates were white, 9.9% were black, and 7.5% had an arrest record. After the switch, 89.6% of juror candidates were white, 10.4% were black, and 9.6% had arrest records. Palm Beach County's population is 14.7% black.
- After the switch, the median age of juror candidates who were voters was 47, while the median age of non-voters was 36. The percentage of candidates who were voters was 80%, while the percentage of non-voters was 20%. Of the candidates who were voters, 90% of those were white, 10% were black, 85% had completed high school, 22% had a college degree, 8.8% had an arrest record, and the median household income was \$51,697. Of the candidates who were non-voters, 88% were white, 12% were black, 80% had completed high school, 18% had a college degree, 10.5% had an arrest record, and the median household income was \$45,018.
- Non-voters did not show up for jury duty as often as voters. Of 124 people who did not respond to two successive summonses, 50% were non-voters although they represented only 20% of the jury pool.

Conclusions

At this time, there is minimal empirical evidence to support a change in the jury source list. The *Palm Beach Post* study, which was limited to Palm Beach County, revealed that the racial composition of jury candidates was almost the same. However, the study

indicated that the median age and median income of jury candidates was markedly different, with the median age being 11 years younger and the median income being \$5,000 lower for jurors derived from the DHSMV source list. These findings may show that the intent to diversify the jury pool with the DHSMV source list is being partially fulfilled.

The only negative tangible evidence that may be attributed to the DHSMV source list is the lower summoning yield that is occurring statewide, which may have resulted in increased costs due to more jurors having to be summoned. Nevertheless, actual costs were only supplied for two counties so it is unknown whether the remaining 65 counties have experienced any increased costs. At any rate, any increased costs should lessen over time if the DHSMV updates its database to include county of residence and provides the list to the court clerks on a more frequent basis.

Voter registration and minority representation in the pool of registered voters is currently higher than it was in 1991 when the change in the source list was being considered. Currently, registered voters represent 71% of the state's 18 and older population, whereas they only comprised 60% of that same population group in 1990. Likewise, registered voters now represent 55% of the state's total population, whereas they only constituted 47% of population in 1990. Similarly, non-white voters now represent 22% of the state's registered voters (16% of the state's population), whereas they only represented 10% of the registered voters (15% of the state's population) in 1990.

The voter registration numbers currently reflect a better representation of the statewide community than existed in 1991 when the jury source list was being considered for change. It is unknown whether these numbers would decline if the source list was changed back to voter registration. Anecdotal evidence, along with the 1989 study commissioned by the Department of State, may indicate a decrease in voter registration should the source list return to registered voters.

Furthermore, although the number of registered voters has increased and they currently comprise 71% of the state's 18 and over population, the jury pool is still much larger with the DHSMV source list. In 2000, the DHSMV source list had 10,652,973 people. This is 86% of the state's 18 and over population and almost 2 million people more than those in the group of registered voters.

RECOMMENDATIONS

At this time, there is not enough data to strongly indicate the current jury source list is defective from an administrative, fiscal, or constitutional standpoint. Likewise, there is not enough data indicating the voter registration source list is superior to the DHSMV source list. Both source lists have positive and negative attributes, yet overall neither set of attributes significantly outweighs the other. In light of the strong public policy interest in encouraging voter registration, and the fact that the DHSMV source list covers 86% of the population that is eligible for jury duty, the effect of retaining the DHSMV source list outweighs the deterrent effect jury duty has on voter registration and the minimal cost associated with addressing the problems with the DHSMV source list.

Accordingly, it is recommended that the DHSMV source list prescribed in s. 40.01, F.S., remain unchanged. However, to alleviate the problems with incorrect addresses, it is recommended that s. 40.011, F.S., be amended to require the DHSMV to submit the source list on a monthly basis to each of the court clerks. This is a logical time to update the list as the clerks must update their jury pool lists on a monthly basis pursuant to s. 40.022, F.S.

Additionally, to resolve the non-county resident problem, it is recommended that the DHSMV be directed to include the county of residence and mailing address on all license and identification card application, renewal, and change of address forms. At this time, the approximate \$5 million cost to immediately correct this sole problem is not justified by the apparent minimal fiscal benefit it will achieve. However, if other changes to the driver's license system are recommended by another committee, then it is recommended that this change be implemented immediately in conjunction with any other changes.¹⁰ Accordingly, if there are no other changes to the driver's license application and renewal system, the DHSMV should institute the county of residence information as soon as possible so that the updated forms will be available when people apply for licenses, renew their licenses, and change their addresses.

Finally, to encourage people to update their driver's license information, it is recommended that s. 322.17(2), F.S., be amended to eliminate the \$10 fee that is automatically charged for replacement licenses that reflect name and address changes. Instead, a fee should only be charged when the updated information

is not provided in a timely fashion. If the new address or new name is not provided to the DHSMV within the time required by s. 322.19, F.S., which is currently 10 days, then a fee should be assessed on a scaled basis, with the amount of the fee increasing in proportion to the length of time the person is delinquent in notifying the DHSMV of the new name or address. It is further recommended that this 10 day period to report name and address changes be changed so that more time is available before a fee will be assessed.

¹ Subsequently vacated on other grounds at 408 U.S. 935, 33 L.Ed. 2d 750, 92 S.Ct. 2855 (1972).

² Subsequently vacated at 476 U.S. 1102, 90 L.Ed.2d 353, 106 S.Ct. 1943 (1986), remanded on other grounds 502 So.2d 1225 (Fla. 1987), later proceeding 581 So.2d 40 (Fla.1991), cert. denied 502 U.S. 986, 116 L.Ed.2d 621, 112 S.Ct. 597 (1991), and receded from on other grounds *State v. ALEN*, 616 So.2d 452 (Fla. 1992).

³ The committee's report is only a set of recommendations to the Florida Supreme Court. The court hears oral argument on the report on November 7, 2001.

⁴ The lone successful attempt to correct this issue occurred in Glades County. DHSMV officials, officials from the court clerk's office, and postal officials physically traversed Glades County and adjoining portions of Hendry County to ensure Glades County residents were included in the source list for Glades County.

⁵ There are 10,652,973 people in the database who are statutorily eligible for jury duty. People under 18, non-U.S. citizens, non-Florida residents, and those who have both licenses and identification cards make up the largest portion of the approximate 5 million people who are not included in the jury source list database.

⁶ Figures supplied by the Division of Elections and the Office of Economic and Demographic Research.

⁷ As of May 2001, there were 8,967,460 registered voters in Florida.

⁸ 1990

Total Registered Voters-----6,031,161
 Total Non-white Voters-----626,124 (10%)
 Total White Voters-----5,405,037 (90%)

Total Population-----12,937,926
 White Population-----10,971,995 (85%)
 Non-white Population-----1,965,931 (15%)

Total 18+ Population-----10,054,096
 Total Registered Voters-----6,031,161
 Total Registered Voters = 60% of total 18+ population
 Total Registered Voters = 47% of total population

2000

Total Registered Voters-----8,752,717
 Total Non-white Voters-----1,948,535 (22%)
 Total White Voters-----6,804,182 (78%)

Total Population-----15,788,065

White Population-----13,283,545 (84%)
 Non-white Population-----2,504,520 (16%)

Total 18+ Population-----12,336,038
 Total number of people in DHSMV database who are eligible for jury duty---10,652,973 (86% of total 18+ population)

Total Registered Voters = 71% of total 18+ population
 Total Registered Voters = 55% of total population

⁹ A total of 961 jury candidates were looked at, 480 from 1997 and 481 from 1998.

¹⁰ In the wake of the terrorist events of September 11, 2001, Senate President John McKay formed the Senate Select Committee on Public Security and Crisis Management to make recommendations to improve the security of Florida's citizens, infrastructure, and economy. Driver's licenses is one of the subjects being studied by the Select Committee. Should the Select Committee make any recommendation that requires an immediate change in the DHSMV license and identification card application and renewal process, it would also be recommended that the changes recommended in this report be implemented at the same time.