

ONE HUNDRED FIRST LEGISLATURE - FIRST SESSION - 2009
COMMITTEE STATEMENT
LB63

Hearing Date: Friday February 20, 2009
Committee On: Judiciary
Introducer: Friend
One Liner: Change provisions relating to assault, firearms, graffiti, gang affiliation, juveniles, and jailhouse informers

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	7	Senators Ashford, Christensen, Coash, Lathrop, Lautenbaugh, McGill, Rogert
Nay:		
Absent:		
Present Not Voting:	1	Senator Council

Proponents:

Sen. Mike Friend
Sen. Jeremy Nordquist
Sen. Heath Mello
Corey O'Brien
Don Kleine
Patricia Sullivan
Ben Gray
Eric Buske
Mark Young
Thomas Warren
Dr. Lina Lander, SD
Bruce Ferrell
Jack Cheloha

Representing:

Introducer
self
self
Nebraska Attorney General's office
Douglas County Attorney
Creighton University
New World Youth Development
Omaha Police Department
NE County Attorneys/ Hall County Attorney
Urban League of Nebraska
UNMC College of Public Health
Midwest Gang Investigators Assn.
City of Omaha

Opponents:

Representing:

Neutral:

Timothy H. Robinson

Representing:

School of Criminology & Criminal Justice

Summary of purpose and/or changes:

LB 63 proposes to make the following changes to Nebraska's criminal code in the following manner:

Section 1. Provides that sections 5, 16, and 17 of this act be added to sections 28-101 to 28-1350 which sections is known as the Nebraska Criminal Code.

Section 2. (Amends Section 28-111) Would add unauthorized application of graffiti as contained in section 5 of this act to Nebraska's Hate Crime Statute, which allows an enhancement to the next higher penalty for convictions defined as hate crimes.

Section 3. (Amends Section 28-308) Would increase the penalty for assault in the first degree from a Class III felony to a Class II felony.

Section 4. (Amends Section 28-309) Would increase the penalty for assault in the second degree from a class IIIA penalty to a class III felony.

Section 5. (Creates new offense) Would create the new offense of unauthorized application of graffiti for those individuals who knowingly and intentionally apply graffiti to a building whether public or private without permission. Section 5 also provides a definition of graffiti and provides that it will be a class I misdemeanor for a first offense and a Class IV felony for second and subsequent offenses.

Section 6. (Amends 28-929) Increases the penalty for assault on an officer in the first degree from a Class II felony to a Class ID felony. The officer must be engaged in their official duties at the time the assault occurred.

Section 7. (Amends 28-930) Increases the penalty for an assault of an officer in the second degree from a Class III felony to a Class II felony. The officer must be engaged in their official duties at the time the assault occurred.

Section 8. (Amends 28-1201) Provides a new definition in this section to define handgun. A handgun is defined as: "any firearm with a barrel less than sixteen inches in length or any firearm designed to be held and fired by one hand."

Section 9. (Amends 28-1202) Revises the specific weapons listed under the concealed weapons statute by striking the words; "revolver", "pistol", "bowie knife", "dirk" or "knife with a dirk blade attachment" and replacing them with the more general terms "knife" and "firearm."

Section 10. (Amends 28-1204) Strikes the use of the words pistol, revolver, or "any other short-barreled hand firearm" and replaces it with the word "handgun". Bill also changes the name of the offense from "Unlawful Possession of a Revolver" to "Unlawful Possession of a Handgun." The penalty provided under this section would be increased from a Class III misdemeanor to a Class I misdemeanor.

Section 11. (Amends 28-1204.01) Would increase the penalty for the "unlawful transfer of a firearm to a juvenile" from a Class IV felony to a Class III felony.

Section 12. (Amends 28-1204.04) Would increase the penalty provided for the "unlawful possession of a firearm on school grounds" from a Class II misdemeanor to a Class IV felony.

Section 13. (Amends 28-1205) Increases the penalty for use of a deadly weapon other than a firearm from a Class III felony to a Class II felony. Also increases the penalty for use of a deadly weapon that is a firearm from a Class II felony to a Class IC felony.

This bill would also re-write the "unlawful possession of a firearm, knife, brass or iron knuckles, or any other deadly weapon provision" of this section, by creating the new crime of "possession of a deadly weapon during the commission of a felony".

- Possession of a deadly weapon other than a firearm, during the commission of a felony would be a Class III felony.
- Possession of a deadly weapon, which is a firearm, during the commission of a felony, is a Class II felony.

For purposes of this section, "use of a deadly weapon" can entail the discharge, employment, or visible display of any part of a firearm, knife, brass knuckles, any other deadly weapon or a destructive device during, immediately prior, or immediately after the commission of a felony. This new section also allows for the communication to another indicating the presence of a firearm or other deadly weapons to be considered as "use of a deadly weapon."

Section 14. (Amends 28-1206) Would change the name of this penalty from "Possession of a deadly weapon by a

felon" to "possession of a deadly weapon by a prohibited person." The reason for the name change, is because this section would in addition to felons and fugitives from justice, also prohibit a "person who has been convicted of a misdemeanor crime of domestic violence within the past seven years" or is "subject to a current and validly issued domestic violence protection order" from possessing a firearm, knife, or brass or iron knuckles.

- This section provides that possession of a knife or brass or iron knuckles by a prohibited person is a Class III felony and,
- Possession of a firearm by a prohibited person is a Class ID felony for a first offense and a Class IB felony for a second or subsequent offense.

This section further provides what qualifies as a misdemeanor crime of domestic violence.

Section 15. (Amends 28-1212.02) By increasing the penalty for shooting at an occupied building from a Class III felony to a Class ID felony.

Section 16. (Creates New Offense) Creates new crime for knowingly and intentionally discharging a firearm from inside or nearby a motor vehicle, towards another person, house, vehicle or building (Drive by shooting). The penalty for a conviction of this crime is a Class IC felony.

Section 17. (Creates New Offense) Creates the offense of unlawful membership recruitment into a criminal gang or organization. A person can be charged with this crime if they threaten, coerce, intimidate, or use bodily harm to entice a person to join the organization or to prevent a person from leaving the organization if the organization or any of its members have engaged in criminal activity that is specified in this section.

Unlawful membership recruitment into an organization or association is a Class IV felony.

Section 18. (Amends 29-901) Would allow a judge to now take into consideration when deciding issues pertaining to the granting and setting of bail, whether the release on bail "could" jeopardize the safety of evidence, victims, or other people in the community.

Section 19. (Amends 29-901.01) Allows judges to consider offender's potential harm to the community when setting bail, instead of the current requirement that bail is decided on the risk potential risk of flight from prosecution.

Section 20. (Amends 43-245) Would add to the list of definitions under the Juvenile Code the following terms and definitions:

- Criminal street gang- means a group of three or more people with a common identifying name, sign, or symbol whose group identity or purposes include engaging in illegal activities.
- Criminal street gang member- means a person who willingly or voluntarily becomes and remains a member of a criminal street gang.

Section 21. (Amends 43-276) Would provide for a judge and prosecutor the ability to consider a juvenile offenders gang affiliation when deciding whether to transfer the juveniles case to juvenile court or to maintain the case in adult court.

Section 22-34. (Amends Nebraska's Handgun and Concealed Carry Statutes contained in Sections 69-2404 through 69-2441) the changes to these sections include the following:

- Removes the requirement that a person's social security number be included on the application for a handgun certificate or concealed carry certificate, which certificate is required before a person can purchase a handgun in this state.
- Strikes statute that information pertaining to those prohibited from "purchasing" or "possessing" a handgun has been changed to provide that information only has to pertain to those "prohibited" from possessing a handgun, because if you are prohibited from possessing a handgun, then you are disqualified from making a purchase.

- Would amend the types of convictions taken into consideration to determine who is prohibited from possessing a handgun to expand the types of laws that the conviction is based on, from the current state and federal laws to now include, state, federal, and local laws.

Section 35. Provides a severability clause in case a section is deemed unconstitutional and such declaration does not invalidate the entire bill.

Section 36. Provides for the repeal and replacement of those statutes amended under this bill.

Section 37. Outright repeal with no replacement in statute the following sections of statute:

- 29-1928 Jailhouse informer; legislative findings.
- 29-1929 Jailhouse informer; admissibility of testimony; requirements.
- 29-2262.01 Person released on probation, parole, or work release or inmate; undercover agent; employee of law enforcement agency; prohibited.

Explanation of amendments:

AM212 would make the following changes to LB 63:

1. Amends section 5 of LB 63 which created the offense of unauthorized application of graffiti, by providing that the penalties for a violation of this act will be:

- A Class III misdemeanor for the first offense;
- Provides that in addition to the misdemeanor provision, the courts can provide that the defendant can be ordered to clean up, repair, or replace damaged property, keep the defaced property free of graffiti for a year or a combination of restitution and labor;
- Order the offender to undergo counseling; or
- Order the suspension of the defendant's operator license for up to one year.

2. Amends page 13, line 12-13 contained within section 14 of the act, to add that a person who is the subject of a current and validly issued domestic violence protection order cannot "knowingly" violate such order. This change was made to remove the possibility that a person with a domestic violence protection order against them could be charged with a crime for simply possessing a steak knife while in their own home;

3. Amends section 16 of LB 63 to provide that the unlawful discharge of a firearm while in or in the proximity of a motor vehicle that such person has just exited at or towards a dwelling, building, or structure is only applicable within the territorial boundaries of any city, incorporated village, or county containing a city of the metropolitan class or primary class.

4. Would amend 29-1912 under section 21 of the act, to provide that the known criminal history, deals, promises, inducement, or benefits that the prosecuting attorney or a person acting on the Attorney General's behalf made or will make in the future to a jailhouse witness are discoverable by the defense and must be turned over for copying or photographing. This amendment also provides that specific statements allegedly made by the defendant against whom the jailhouse witness will testify, the case name and jurisdiction of any criminal cases known to the prosecuting attorney in which the jailhouse witness testified, or any instance known to the prosecuting attorney in which the jailhouse witness recanted testimony about statements made about another criminal defendant that were disclosed to the jailhouse witness while he or she was a jailhouse witness is also discoverable and must be turned over to the defendant if such information exists and is known by the prosecution;

5. Adds a new section 25 to provide that juveniles taken into custody pursuant to a legal warrant of arrest shall be delivered to a probation officer who will make a determination of whether or not the juvenile needs to be detained in a detention facility. The Probation officer shall consider the best interest of the juvenile, community safety, and that the court issuing the warrant has been notified that the juvenile has been take into custody;

6. AM212 is further amended to add a new section 31, which creates the Office of Violence Prevention under the Commission on Law Enforcement and Criminal Justice. The Office would be charged with developing, fostering, promoting, and assessing violence prevention programs for implementation in the state of Nebraska. The Office of Violence Prevention shall have a director and advisory council, the counsel shall have six members and it's suggested that the members' qualifications be as follows: two members representing local government, two members representing

law enforcement, one member representing community advocacy and one member representing education with some expertise in law enforcement and juvenile crime. The Director of the Office of Violence Prevention and the Advisory Counsel to the Office shall both be appointed by the governor and will be tasked with raising funds for the program, assess applications for grants from the Office, and make recommendations to the Commission on Law Enforcement and Criminal Justice for grants to be awarded. A preference for grant funding shall be given to programs which appear to have the greatest benefit to the state and have as its goals the reduction of street and gang violence and the reduction of homicides and injuries caused by firearms.

7. AM 212 adds an emergency clause to the act.

Brad Ashford, Chairperson