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Judiciary Committee  
February 20, 2009

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[LB35 LB63 LB508]

The Committee on Judiciary met at 1:30 p.m. on Friday, February 20, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB35, LB63, and LB508. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: Mark Christensen. []

SENATOR ASHFORD: Why don't we get started here, if we could. I do have a list of testifiers on the first two bills and a few people haven't come yet, but that's not a problem. So let's get going. The first two bills we have are LB35 and LB63, and just so we all understand where we're at, LB35 was originally introduced by me, and LB63 was originally introduced on behalf of the Attorney General, I believe, by Senator Friend. I know that for sure. And those two bills are going to be heard together. It will be my intent as introducer of LB35 to amend LB35 into LB63. So as we go forward after the introductory comments, just feel free to talk about either bill as you will. With that, I'm going to introduce LB35, but with the idea that it's going to be amended into LB63. Then I know Mike Friend is coming to also talk about LB63. Senator Nordquist is here as is Senator Mello to talk about the bills as well. So after that, we'll go through the testifiers and then go on to the third bill, which is going to be heard separately. So with that I'm going to introduce, Senator Lathrop, if I could, introduce LB35. [LB35]

SENATOR LATHROP: Did you introduce that one? [LB35]

SENATOR ASHFORD: I haven't yet, but you may. (Laughter) [LB35]

SENATOR LATHROP: Great. Thanks. Okay, this a crowd of people that are here all the time, so we'll dispense with that and go straight to the introduction. Yes, the usual suspects are here. [LB35]

SENATOR ASHFORD: Thank you, Senator Lathrop, and members of the Judiciary Committee. I'm here to introduce LB35 which would adopt the Violence Prevention Act, prohibit certain gang activities, and change certain firearm provisions. On a personal level, beginning in the late '80s when I served in the Legislature, I had been working on violence prevention issues and I can truthfully say that, I believe, we, after a number of years working on these issues, as I know many of you in this room have done as well, I believe we have reached a convergence. That we have reached a point on this issue where so many good people and hardworking, law enforcement, legal people, advocates, are coming together to try to do what is so needed and that is, working together on the state and local level to stop the violence. As of August, 2008, Omaha had experienced 106 homicides in the past three years. With these homicides, some societal costs that are immense continue to grow. UNMC and Creighton Medical Center care for many of these cases. In 2005, 2006 the cost of care for gunshot wounds at

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UNMC and Creighton Medical Center approached \$5 million. There were 1,100 firearm injuries in Nebraska from 2002 to 2006, accruing \$25 million in hospital charges. Approximately 40 percent of these injuries were the result of assaults with firearms. The cost of hospital charges for this 40 percent was \$17 million. Seventy percent of the total charges for only 40 percent of the injuries, \$17 million is a lot of money. The cost to the taxpayer to incarcerate a juvenile offender at the Nebraska Youth Facility is \$61,144 per year per juvenile, approximately six times the cost of educating the student at the University of Nebraska, or sorry, in the Nebraska public schools. We are not alone. Let me just say too that, in going through these statistics that most all of us are aware of, I am absolutely convinced having worked on this issue now intensely as has this committee for over a year, that law enforcement, the prosecutors, the judges, the...all of those who work on these issues every day, are working at the highest level of competency and are making significant strides and have made significant strides over the years. You know, in my experience going back to the Project Safe Neighborhoods, a federal, local initiative. Very, very successful. And a number of other federal, local initiatives have been extremely successful. This is not an effort or an exercise in pointing fingers at failure. In my view, this is an opportunity for change and the change that I'm advocating for, as what, is the coming together of local law enforcement and state law enforcement and others who have worked on these issues to come up with specific solutions and plans. Because we clearly have the players in place. We have a number of people in this room and others throughout the state and throughout the city of Omaha are at the top of their game, and it's time to bring them all together. It's time to bring them all together and stop the shooting and stop the shooting now. I believe we can do that. I know...this is not about me but I clearly was exposed to this during my years at the Omaha Housing Authority when I would go to the shooting scenes and see the bullet holes and talk to the victims. And I know that many of the people in this room do that on a daily basis in their careers. And it's an immensely emotional experience. These are nontraditional. Many of them, the street violence that we've seen, is nontraditional. I noticed in the World-Herald today and Senator Council and I were looking at an article in the World-Herald about an 8-year-old girl in Omaha who was on 21st and Parker Street who was shot at. Not injured, thank God, but an 8-year-old girl in her backyard, I believe. It's throughout the city of Omaha and in other cities, but clearly in the city of Omaha, we're faced with these gun related violent crimes. There's a whole bunch of notes here and I'm going to kind of skip through them. I want to just talk a little bit about how I see this Office of Violence Prevention working. In order to be successful there needs to be collaboration. And the collaboration cannot be just in words but must be in acts and deeds. In order to be effective we have to bring people together at the top of their game to find a solution. The way specifically I would like this to work, if we pass this part of LB63, would be to create a commission but not a commission that's going to sit around and study issues. This is a commission and a group of individuals that will be selected to work with the Crime Commission and the Attorney General to deal with prevention and intervention. What is so exciting to me, philosophically about what we're talking about in this part of LB63, is taking intervention and prevention and

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making it a significant law enforcement tool. This is not about being nice and soft and creating a new social welfare program. This is about getting out on the street, getting kids off the street, and getting them into the resources that are available and certainly in Omaha, and other cities throughout the state. Many other cities have developed programs that have dealt with this intervention, kind of new technique of intervention. I know some of the people that went with me to Chicago to visit the CeaseFire program are here, Ben Gray, and others. Trish Sullivan is going to testify from Creighton. She's been working with me on some of these violence issues. Cincinnati has a program that evolved out of some intense problems with police community relations about ten years ago. It evolved into a very positive program of reducing crime by intervening before the crime starts. Obviously, if we can intervene, if we can stop the crime, if we can stop the shooting, all the social costs and all the economic costs that we have talked about, that I've talked about and we all know about, won't occur. And again, I'm absolutely convinced that we can do this. I know we can do this. My hope would be that this bill has the emergency clause, some amendments will have the emergency clause attached, hopefully this will pass with sufficient money. (laugh) You know, we're talking to the Appropriations Committee about trying to get sufficient funds to make sure that when this bill, when and if, and hopefully it will, passes, that by the middle of June we have at least a preliminary plan for at least for Omaha, which is the city that has experienced the highest rate of gun related homicides and injury. And so by this summer, you know, utilizing some of the resources that are clearly already in place, and Ben Gray is going to come up and talk about what he's done in the last summer and working and doing now on violence interruption, working with law enforcement with Don Kleine's office, with everybody that's in this room. I believe that the platform is in place to significantly reduce gun violence and homicides and, hopefully, by half. There's no reason that if...we working together and I think Ben will talk about how we've already experienced a reduction in homicides in Omaha, and Chief Buske as well, because of their working together. Let me also thank a few other people. I want to thank especially the Attorney General, the Attorney General's office, Corey and Holley. I want to thank this committee because this committee was charged this summer and fall with working on this issue. And LaMont and Jono Bradford. LaMont Rainey, we worked very hard to put together a package of research that the committee has in front of them. I want to thank the group that came, has been together with me since April working on this project. We went to Chicago, visited there and have studied these issues. Senator Friend for introducing LB63 which he will talk about. The Governor for giving his support for this effort. And with that, I am anxious to hear the testimony, and certainly urge and will urge that we advance this bill, get things moving, coordinated, and will even have more success than we've had in the past, hopefully. Thank you. [LB35]

SENATOR LATHROP: Any questions for Senator Ashford? Thanks. And I assume you will be here to close. Senator Friend, I think we've decided to introduce both these bills and then hear testimony, so if you don't mind? [LB35]

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SENATOR FRIEND: Okay. [LB35]

SENATOR LATHROP: LB63. [LB35]

SENATOR FRIEND: (Exhibit 1) Thank you, Mr. Chair, and Mr. Vice Chair, and members of the Judiciary Committee. I come before you today to introduce LB63 with a key amendment, AM212, which does become the bill. This bill, members of the committee, is about addressing violence, not just in the city of Omaha, but throughout the state of Nebraska. This amendment, AM212 is the result of much hard work as Chairman Ashford pointed out between the Chairman, Chairman Ashford, the Attorney General, Jon Bruning, and his office, Senator Heath Mello and Jeremy Nordquist, among countless others. The amendment is a compromise reached by the parties that I, the aforementioned parties, a compromise reached by the parties to address a proliferation of gangs, of violence in our communities, and this amendment becomes, like I said, this amendment becomes the bill. It stiffens penalties, while also addressing as Senator Ashford pointed out earlier, the need for creative and innovative ways to help address violent crime. Like I said, not just in the city of Omaha but throughout our state. Let me shed a little light on the extent of the problem at least as far as I can go with anecdotal and empirical evidence in the city of Omaha. Last December, Omaha police and federal agents arrested 17 gang members for conspiring to distribute crack cocaine. That was a report on KETV that was titled "At least one suspect still loose." In September of 2008, there were 19 people shot in 15 days in Omaha as a result of violent crime, gang violence. There were also six homicides in the city in that same period, five were gang related. On June 15, 2008, 18-year-old Daniel Miller killed 18-year-old Julius Robinson in a drive-by shooting. Miller's friends say the victim insulted his Millard based gang on his MySpace page. That was a report in the Omaha World-Herald on June 24, 2008, titled "Shooting victim publicly defied his gang." Omaha has the...part of the greatest concentration of gang members and gang crimes associated, or excuse me, violence associated with gang crimes that can probably be found between Sioux City and Scottsbluff. It's also a threat to law enforcement as you can imagine. In 2008 Officer Paul Latschar of the Omaha Police Department's Gang Unit was critically injured by a known gang member. Allen shot Latschar three times during a traffic stop. We all know about Sgt. Jason Pratt, or at least I think we do, was shot in the head by a gang member in 2003 during a traffic stop. Police searched the member's residence earlier and they found a loaded Tech 9. Twenty-four-year old Officer Jimmy Wilson, Jr. was, also a well-known situation, was killed after he pulled over a van for having fictitious plates. Two members of the Bloods opened fire on him with an AK47 and a 9 millimeter semiautomatic pistol while he sat in his car. In 2008 four gang members broke into Lincoln schools and stole more than...or Lincoln Scheels, excuse me, Scheels, and stole more than 80 guns. When Lincoln Police Department SWAT Team served the warrant, they found one of the gang members with one of the stolen guns. He was loading a clip for it. The particular member had threatened to kill a police officer only a couple of months before. This bill is about going after...the bill is

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about doing two things, thanks to the communication, I think. And I was a small part of it. Senator Ashford has been so interested in this subject matter for so long. He was an integral aspect of dealing not just with the community members that you'll see behind me in testimony, but also with you as committee members and also with other important members of all of our communities that this type of violent crime affects. It's about going after the worst offenders who are perpetrating violence in our communities, but it's looking to help address the issue in an up-front and creative manner. This bill creates the Office of Violence Prevention and an advisory council. The office and the council are designed to seek and distribute funds for much needed programs to address gang violence and violent crime. Additionally, the office is going to be tasked with the developing, fostering, and promoting, and assessing violence prevention programs. By the way, 46 states and the District of Columbia have enacted some form of legislation closely resembling this legislation. It's time for Nebraska to pass legislation to deal with the violent crime and the drugs in our communities. And the passage of this bill, AM212 to be specific, will put us in line with federal laws by adding more bite to our current penalties also. I do have an amendment that actually adds some of the language that I talked about. This is an amendment to AM212 and it adds a little clarification to the office, the operations of the Office of Violence Prevention and advisory council. So I'll pass that out in a minute. Members of the committee, like I said, this is a cumulative effort. I mean, and I think Ashford, Senator Ashford mentioned earlier this has been a long time coming and there's been a lot of communication. I haven't been involved in all of it. I know his staff is to be commended. I'd be happy to answer any questions that I can. I know that there are plenty of folks behind us that would like to speak to this subject matter too. So for now, that's all I'd have at this moment. [LB35 LB63]

SENATOR ASHFORD: Thanks, Senator Friend. Yes, Senator Council. [LB35 LB63]

SENATOR COUNCIL: Yes, thank you, Senator Friend. In looking over AM212 and particularly LB63, which was the original version, what I need assistance with in the statistics you cite and the scenario you've related, I'm vividly and intimately familiar with, the rise of gun related violence. But when I look through the legislation, I don't see anything of any real significance to stop the flow of these guns into the community other than to enhance the penalty for transferring a gun to...a revolver or a handgun to a juvenile. What do we do to stop the source of these guns into the community? Because they're not just falling into the hands of juveniles. The incident that Senator Ashford related, someone took a shot at an 8-year-old this morning. We don't know whether that was a juvenile. We don't know whether that was an adult, but that's clearly somebody who has a gun that shouldn't have one. And the question is, is what do we find in this bill, where do we look in this bill to deal with the people who are providing these weapons to, whether they're juveniles or adults in the community? Where are the enhancements, or where can the enhancements be made to stop the flow of guns into the community? I mean, you know, we're seeing people with, you know, machine guns, with Russian assault weapons, none of which last time I checked, were being produced

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in Nebraska or...I was surprised, I guess, they are pretty routinely sold in Nebraska, but to place some limits. I mean, I met a 22-year-old guy who showed me an arsenal and all of them were legally purchased weapons. What do we do to stop that? [LB35 LB63]

SENATOR FRIEND: Well, we can address it with a...we can address it in this bill by dealing with unlawful possession of a handgun by a juvenile, unlawful transfer of a firearm to a juvenile. Those penalties are actually being increased in this bill. [LB35 LB63]

SENATOR COUNCIL: That's what I'm saying. I acknowledge that. [LB35 LB63]

SENATOR FRIEND: Yeah, 28-1204 and 28-1204.01 possession of a firearm on school grounds. I mean, we're actually increasing penalties in those areas. [LB35 LB63]

SENATOR COUNCIL: Yeah, but the penalty...but you're increasing the penalty on the person who, you know, is the recipient of the weapon. What about the people who are supplying these weapons? [LB35 LB63]

SENATOR FRIEND: Understood. And I think part of the argument, and it could be an argument that doesn't get to the root of your question, is that if you provide more of a deterrent to the person who actually wants to use an illegal weapon, the argument could be that you're providing just enough of a deterrent for the person either not to use it, or that we can actually take that person off the street so they can never possibly do it again. I don't know that it's a philosophical argument, Senator Council, but I do think we're trying to address it with a bill that's practical and something that we can get our hands on. And it's my understanding that there's been virtually two years of work on this to try to address exactly the type of thing that you're talking about. Now, does it? Well, that's going to be open to policy, you know, determination. But the only way I can answer that is that some of these penalties are being increased. And I think, I think to a certain degree in fairness that is addressing some of what you've brought up. [LB35 LB63]

SENATOR COUNCIL: Well, and I acknowledged. I hope I said it clearly. I acknowledged that the bill increases the penalty for transferring a handgun to a juvenile or otherwise providing a handgun to a juvenile. But, I mean, a lot of these gun crimes are being committed by people who are right at the age of majority or slightly over the age of majority, and they're having ready access to these types of weapons. I mean, and then, I don't know what kind of discussion has been held over the course of the one or two years that this is being developed, but I just want to state for the record that we have to do something to stop the flow of weapons into the community and enhance the punishment for those who are found to be the suppliers and not always the case that they're supplying them directly to juveniles. Now you may get the...this bill will capture the intermediary guy who gets the gun and then he or she turns it over to a juvenile.

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This is going to get them, but what about the person in the first instance who supplies the weapon to an adult who then turns it over to a juvenile? [LB35 LB63]

SENATOR FRIEND: Yeah, and look, obviously, you're strengthening penalties on those people if you can find out who they are. But I also think that it's arguable that part of the reason that Senator Ashford's piece is in here and part of the reason that this coalition was built is because the Office of Violence Prevention and the advisory council will address some of those issues as well. Some of these people can be dealt with. And they can be dealt with by not necessarily tossing them in the...you know, into hard time for the rest of their lives. I've heard those arguments, you know, when I've been around with Senator Ashford at a couple of his venues. So it's not an esoteric argument. It's a practical one. I think it's a matter of finding the people who are doing the bad work and having the tools to deal with them when you find them. And maybe it's not a, you know, great answer. [LB35 LB63]

SENATOR COUNCIL: No, I mean, and don't get me wrong. I'm aware of the work that has been done and is ongoing with regard to the areas of particularly LB35 that deal with the youth crime prevention. You know, in fact, I've worked closely with some of the people who have been carrying out that work over the last 12 to 18 months in Omaha. So I'm aware of how that portion of the legislation is designed to work and the objective that it's attempting to achieve. I'm just concerned because of the proliferation of gun violence that there has to be some way while doing the prevention and the intervention to keep juveniles, young people from engaging in it, we still have to keep it away from them from the outset by stemming the flow of weapons into the community. And it just...there has to be some other way to reduce the amount of guns that are available and the type of weapons that are available for possession in the community. Because it's just...it's ever increasing and I don't think I'm preaching to the choir when I tell you that. [LB35 LB63]

SENATOR FRIEND: No, I...I concur, Senator Council, and all I would submit to you is I think based on my reading, and again it's been a tough go, there's a lot of stuff that we're doing here. But based on my reading, I think it is a practical bill that will address some of those things that you're talking about. I mean, we're increasing penalties. We're increasing state criminal code to the degree that, you know, we're coming a heck of a lot closer to federal, you know, to federal guidelines and federal laws. And I think that will address some of those things. It isn't esoteric. I think it's practical. Our law enforcement community and those people are out there looking for those folks and when they find them, they need the tools for a county attorney and, you know, our...they need those tools for our system to work appropriately. I don't think we're not...I think we're on the same page and...but I think we address some of those. [LB35 LB63]

SENATOR COUNCIL: I'm just trying to see if we could get it. I'm concerned about the person and I don't want to beat a dead horse and you've got a lot of... [LB35 LB63]

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SENATOR ASHFORD: That's a great issue, Senator Council. [LB35 LB63]

SENATOR COUNCIL: ...but under the bill, and I appreciate it because one version increased the penalty for providing a handgun to a juvenile to a Class IV felony. I think your bill increased it to a Class III felony, if I'm correct. [LB35 LB63]

SENATOR ASHFORD: That's correct. [LB35 LB63]

SENATOR COUNCIL: Okay. So I see the enhancement there. But what I'm talking about is, if you get Joe Blow for transferring a firearm to a juvenile, I want to know where Joe Blow got the firearm. I mean, what do we do to stop the person that provided it to the people who are providing them to the juveniles. That's all I'm talking about and maybe we can figure out some way to address that. [LB35 LB63]

SENATOR ASHFORD: And we did, and I think we have. Senator Friend just talked about issues regarding tracing firearms and, you know, reporting stolen firearms, I think was something we tried to do last year. And those are...the nice thing, I think, wouldn't you agree, Senator Friend, is that with this coordinated effort, there already are coordinated efforts going on, but with this coordinated effort with all this star power, which we're going to have involved with this thing, is that, you know, they can work with the federal authorities, for example, as they already do and to some extent, and have a coordinated effort directed at trafficking. I mean... [LB35 LB63]

SENATOR FRIEND: Yeah, Chairman Ashford, and members of the committee, there are folks that commit violent crimes in Omaha and they laugh their way all the way through court because they know if they were in federal court they'd be in deep trouble. But the bottom line is, they can skate and they can do things that the prosecutor can't even touch them for. Now, I understand exactly what Senator Council is saying and I, but I think, again, I can only reiterate I don't think it's esoteric. I think that with two years of work on legislation like this that far dates me that they're trying to anticipate those questions. That the Attorney General's office and the law enforcement community and the county attorneys throughout the state have tried to anticipate exactly those questions. And I, I'm a midget compared to those folks as far as...I mean, a mental midget, I should say, as far as understanding where, you know, where we're going. I didn't mean to use that type of terminology, but... [LB35 LB63]

SENATOR COUNCIL: Okay. I don't want to use that...if you've got all these folks here to testify. [LB35 LB63]

SENATOR ASHFORD: Maybe with that we better move on before we say...(laugh). Senator Lautenbaugh, I'm sorry, you had a...Okay, thanks Senator Friend. Senator Nordquist. [LB35 LB63]



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SENATOR NORDQUIST: Thank you, Chairman Ashford, and members of the committee. My name is Jeremy Nordquist and I represent District 7, here today to express my strong support for LB63 and especially as amended by AM212. This comprehensive package is an issue that I followed closely. I attended the Violence Prevention interim study hearing last fall held in downtown Omaha, and the portion that I'm really concerned about is the antigraffiti measures. As you know, earlier in January, I opened and introduced LB276 and the committee heard that. Heard testimony from Councilman Gernandt, Rich Gonzalez of the Omaha Gang Unit, Omaha City prosecutor, and we really laid out there that graffiti is a real problem in Omaha. It's more than an eyesore. It lowers property values and is often evidence, as you heard from Lt. Gonzalez that 85 percent of the, upwards of 85 percent of the graffiti in Omaha is gang related. And that's why we worked with Chairman Ashford, members of the Attorney General's office to put this package together and I believe that LB63 is the best vehicle to get antigraffiti legislation enacted. It's a real problem in Omaha. It's a real problem in communities throughout our state. The bill, LB63, the underlying bill does contain enhanced penalties as did LB276, but the amendments in AM212 includes kind of the comprehensive portions that were included in the bill that I introduced which includes the, gives the court the discretion to suspend a drivers license for a year, order the perpetrator to counseling or, and order restitution. So that being included in the amendment here I think really has a, is a comprehensive package to, on antigraffiti legislation and that being included in LB63 makes this a real comprehensive piece of legislation related to gang activity in our community. So with that, I would take any questions you might have. [LB35 LB63]

SENATOR ASHFORD: Thank you, Senator Nordquist. I want to compliment you and Senator Mello both for your work on this and with Councilman Gernandt and I don't see he's here today, but he's also been working very hard on this issue and so please express to him our appreciation for his efforts. [LB35 LB63]

SENATOR NORDQUIST: Thank you. [LB35 LB63]

SENATOR ASHFORD: Thank you. Any questions of Senator Nordquist? Senator Mello. [LB35 LB63]

SENATOR MELLO: Chairman Ashford, and members of the Judiciary Committee, my name is Heath Mello and I represent Legislative District 5. I don't want to repeat a lot of what Senator Nordquist said so I'll try to keep it short. I'm here in support of LB63 because I felt that it was a very comprehensive package in regards to dealing not only with violent crime and gangs but also some of the revisions that Senator Ashford and Senator Friend and Nordquist and the Attorney General's office did to combine portions of LB276 into this bill. I think it's sorely needed and more importantly as it affects my district is the graffiti issue and the gang issue and I think it's a positive step that the state

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can move forward to deal with the rising violent crime issues that we're facing in Omaha. The other component though, as a member of the Appropriations Committee, is creating the Office of Violence Prevention. And I know that with the economic crisis, budgetary times, it will be tough but this has to become a priority of our state. And funding violent prevention activities, gang prevention activities, is something we have to do. It's something we have to make sure that this state plays a significant role in and tries to be a good partner with local law enforcement and local government agencies. So with that I would like to thank the committee and answer any questions. [LB35 LB63]

SENATOR ASHFORD: And thank you, Senator Mello, and we appreciate your leadership and Senator Nordquist's leadership on the Appropriations Committee because we will need some funding to make this work. Senator Lathrop. [LB35 LB63]

SENATOR LATHROP: I'm just wondering if this resolves your concern over graffiti? [LB35 LB63]

SENATOR MELLO: I think, I think with... [LB35 LB63]

SENATOR LATHROP: Do you think we've properly addressed it in this bill? [LB35 LB63]

SENATOR MELLO: I think in this session this bill will...I think with the combination of LB276 is amendments into this bill, I think this is perhaps the best graffiti legislation that we can see right now. [LB35 LB63]

SENATOR LATHROP: Okay. Good. Thank you. [LB35 LB63]

SENATOR ASHFORD: Thanks, Senator Mello. Thanks for all your help. [LB35 LB63]

SENATOR MELLO: Thank you. [LB35 LB63]

SENATOR ASHFORD: I've got a list here and I tell you what I'm going to do is, I'm going to try to remember what everybody told me about scheduling and we're going to start out with County Attorney Don Kleine first and then Corey, or you want to...Corey, and then Don Kleine and then Ben Gray and then we'll go around and then Trish has to leave, Sullivan, so those will be the first four if that's okay. And if anybody else needs to leave right away and then Hank Robinson is in the back. Go ahead, Corey. [LB35 LB63]

COREY O'BRIEN: This is the first time I got to trump the County Attorney. [LB35 LB63]

SENATOR ASHFORD: Well, (laugh) I know who my County Attorney is and I... (Laughter) [LB35 LB63]

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COREY O'BRIEN: (Exhibit 2) He will let me hear about it later too. Good afternoon, Mr. Chairman, and members of the Judiciary Committee. My name is Corey O'Brien, and I'm an Assistant Attorney General with the Drug and Violent Crime Division of the Nebraska Attorney General's office. Today it is my privilege to testify in support of LB63 and more precisely AM212, on behalf of the Nebraska Attorney General's office. First, I would like to thank Senator Friend for introducing LB63 and for promoting the objectives it seeks to accomplish. I'd also like to thank Senator and Chairman Ashford for his leadership, his staff, as well as Senator Nordquist and Senator Mello for their efforts on working on AM212. LB63, and now most of what has become AM212, is a comprehensive violence prevention bill that was drafted in consultation and collaboration with the Police Officers' Association of Nebraska, the Police Chief's Association of Nebraska, the Nebraska Sheriff's Association, the Midwest Gang Investigators, the Nebraska County Attorney's Association, and the Nebraska Attorney General's Office. First, I'd like the committee members to know that AM212 is not a knee-jerk reaction to last year's escalation in violence in north Omaha. Instead, it is a bill that the Attorney General's Office began working on almost two and a half years ago. In that time this bill has been through countless drafts and was put together by consulting extensively with the coalition I previously mentioned. At one time or another, my office has probably shown it to and gotten input from virtually every Police officer and prosecutor in this state. In seeking their input, our foremost interest was in assembling a comprehensive legislative package that was more than cosmetic and would make a real and meaningful difference on Nebraska's streets and in its courtrooms. AM212 is the culmination of all these efforts. The message AM212 sends to gang members and violent offenders is tough, but clear. That message, Nebraskans are tired of the senseless robberies, shootings, and killings occurring on our streets. And that from this date forward if you choose to continue your gang-banging lifestyle and violent crimes, you will go to prison for a very long time. In sending this message, AM212 contains a number of provisions including increasing the potential criminal penalties for the most serious and violent weapons offenses contained in our criminal code. In fact, many of these crimes will now carry mandatory minimum jail sentences that will deny many convicted violent offenders from any opportunity to avoid incarceration. To help explain these increased penalties, I have handed out a chart to this committee. The chart depicts the possible sentencing range for the various crimes that are involved in AM212. As the chart depicts, the possible sentencing range is increased at least one Classification level higher for the crimes of first degree assault, second degree assault, unlawful possession of a handgun by a juvenile, unlawful transfer of a firearm by a juvenile, possession of a firearm on school grounds, second degree assault of an officer, and use of a deadly weapon to commit a felony. Additionally, as the chart indicates, mandatory jail sentences will now be imposed against those offenders convicted of first degree assault on an officer, possession of a firearm by a prohibited person, use of a firearm to commit a felony, and shooting at an occupied structure. Frankly, these sentencing increases have been warranted for almost 20 years now and are out of line with the sentences that have been enacted for other less serious and less

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violent crimes. For instance, the current possible punishment for shooting and seriously injuring someone, traditionally a first degree assault and for the crime committed when a previously convicted felon is found to be in possession of an AK47 is the same possible sentence that's available for someone who shoplifts a \$1,500 watch. Can I just wrap up real quick? [LB35 LB63]

SENATOR ASHFORD: Yeah, wrap it up. (laugh) [LB35 LB63]

COREY O'BRIEN: While it would be naive of me to think that AM212 will be a magical elixir that will eliminate our gang and violent crime issues entirely, I have no doubt that it will have a significant impact on these problems. For me personally, AM212 will be a tremendous success if it prevents just one innocent person or law enforcement officer from being harmed or killed. So on behalf of the Nebraska Attorney Generals Office, I would urge the members of this committee to advance AM212 to General File. Thank you. And I'd be certainly glad to answer any questions the members of the committee might have for me. [LB35 LB63]

SENATOR ASHFORD: Thank you, Corey, and again, thank the Attorney General for acknowledging that this is a comprehensive approach that if we can stop someone from committing one of these crimes by getting them off the street, getting in their face, doing what needs to be done, that none of these things come into play, none of these costs, human and economic costs. And I might say, that's a significant, I think, it's significant leadership on the part of the Attorney General to acknowledge this approach, so I certainly appreciate his leadership. [LB35 LB63]

COREY O'BRIEN: As do we commend you, Senator. [LB35 LB63]

SENATOR ASHFORD: Thank you. Any other, any questions of Corey? Thanks, Corey. [LB35 LB63]

COREY O'BRIEN: Thanks. [LB35 LB63]

SENATOR ASHFORD: Don. [LB35 LB63]

DON KLEINE: Good afternoon. Thanks for allowing me to be here today. My name's Don Kleine, K-I-e-i-n-e. I'm the Douglas County Attorney. I'll be very brief. First of all, I would like to thank again the parties involved here, Senator Ashford, Senator Friend, Senator Mello, Senator Nordquist, Jon Bruning, the Attorney General, for their interest in support and bringing together this group to get this legislation. Obviously, I'm testifying as a proponent for these bills. You know, I've personally been involved in the prosecution, the handling of many gang homicides, gang shooting cases, youth violence cases, and my office has handled many more. And this legislation will be a necessary tool for the deterrence aspect and a prevention aspect, I think, to cut down on some of

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the violence that's going on in Omaha and obviously, getting guns out of people's hands. And I think, Senator Council, your question about firearms and getting people who provide firearms to youth is a very good question. I think, you know, if you look at the history, we've been working a long time with the United States Attorney's Office Project Safe Neighborhoods in prosecuting gun cases. Former Chief Warren, current Chief Buske, every time we have a gun involved in a case of a shooting, it's not just the perpetrator that's shooting that we look to, it's that gun is traced, the ammunition is traced, and I can give you anecdotal stories with regards to cases that have involved not just the perpetration of the crime of the homicide, but also of a person who gave that gun to somebody. I mean, the Corey Allen case is a prime example. That gun was provided to Corey Allen by another fellow by the name of Jamin Mynster. He's been convicted of a felon in possession. He got the gun from a woman who bought it, so there's a tracing element that goes along with every one of those cases due to the hard work of the Omaha Police Department. Just recently, just yesterday, had a call from the United States Attorney's Office, who we work very closely with. Again, a straw purchase case, female buys five guns at a gun store, gives them to other people to use that wouldn't be able to buy the guns, those people, we decide where the best place is to prosecute those people that provide the guns to the juveniles or get those from a store on a legal purchase, but then they're used for illegal activity. But I think that's important and I think that's something that is being worked on by law enforcement, of course, to get to the source of where these guns are coming from, how they're getting into the hands of youth, and prosecuting those people that provide those guns to the youth. So I'd be happy to answer any questions, but... [LB35 LB63]

SENATOR ASHFORD: Yes, Senator Council. [LB35 LB63]

SENATOR COUNCIL: Just for follow up, Don, I've known you for so long. No disrespect by not calling you Mr. Kleine, but just the example you just gave. I mean, that's what's troubling me. You have someone who lawfully purchases five weapons and gives them to people who aren't juveniles. [LB35 LB63]

DON KLEINE: Yes. [LB35 LB63]

SENATOR COUNCIL: But knowing or suspecting that those weapons are going to be used criminally, what tool does law enforcement have to get to the person who purchased the five guns legally? [LB35 LB63]

DON KLEINE: Well, and that's what this case that I've talked to you is about. I mean, I've talked to the U. S. Attorney who is involved in it. They're talking to us. We're talking about gathering evidence to show a conspiracy with people who they gave the guns to and used those in a criminal activity. So there's potential there. There are ways to prosecute those kinds of cases. [LB35 LB63]

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SENATOR COUNCIL: But then we've got to...we don't have it right here, but the way the prosecutor's working with the U. S. Attorney's Office then. Do you have a tool? [LB35 LB63]

DON KLEINE: Right. Yeah, we have a tool also but it's not as effective and, I guess, I'm a strong believer in relying on local government as much as we can. Local prosecution rather than the federal government to handle local crime. I mean, certainly, there's a place for that but we need to have the tools so that we can handle those prosecutions. We handle the majority of the gun cases even with our work with the United States Attorney's Office. They prosecute some, we prosecute the greater number of them. But certainly, we need the tools to effectively deter those kinds of people that are using guns for these violent crimes. [LB35 LB63]

SENATOR COUNCIL: Thank you. [LB35 LB63]

SENATOR ASHFORD: Thanks. Senator Lathrop. [LB35 LB63]

SENATOR LATHROP: I do have a question for you and it relates to LB35. Do you have a copy of that in front of you? [LB35 LB63]

DON KLEINE: Yes. [LB35 LB63]

SENATOR LATHROP: If you can, look at Section, on page 7, look at Section 3. [LB35 LB63]

SENATOR ASHFORD: You may have the amended version, Don. He may have...you're looking at the green copy, the amended version, but it's the same idea. [LB35 LB63]

SENATOR LATHROP: Well, it may say the same thing and if it does, here's my question. If I'm reading it, it says, a person who, number (1) is a criminal street gang member, and then there's two other options, is guilty of illegal gang participation. Do you see that? [LB35 LB63]

DON KLEINE: Yes. [LB35 LB63]

SENATOR LATHROP: And then it says it's a Class I misdemeanor to engage in or be guilty of illegal gang participation. So if being a gang member can subject you to a Class I misdemeanor, how often does that offense happen? Do we need to put something in there so that it's every day that you do it. Do you see what I mean? [LB35 LB63]

DON KLEINE: Sure. [LB35 LB63]

SENATOR LATHROP: You could literally be, charge somebody 52 misdemeanors in a

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day for... [LB35 LB63]

DON KLEINE: Well, it's really like a status offense. [LB35 LB63]

SENATOR LATHROP: Pardon me? [LB35 LB63]

DON KLEINE: It's really like a status offense, being participating or being a member of this gang is the crime, so you're saying depending on how long you've been a member that... [LB35 LB63]

SENATOR LATHROP: Well, I'm just asking how many times if you're a prosecutor, let's say you're the City Attorney who would do this in Douglas County typically, or your office if it happened in the county, how often is a person guilty of that? Can you charge them every single day? Or do we need to put something in Section 3 that says, you know, once a month you can be... [LB35 LB63]

DON KLEINE: Well, I don't think you can, because...do you have to renounce before you aren't a gang member, if you were once a gang member? I don't think you could charge them more than one time. But I think it's an enhanceable offense when we talk about being involved in other crimes also. I think that's a greater purpose with that proof of participation in a gang. Certainly, like I said, I think there's one charge. [LB35 LB63]

SENATOR LATHROP: I'm just...this is about our drafting and what makes sense because it seems to me that let's say that you do...and with that I assume that the Omaha police could do a round up, bring everybody in. You're all members of the Bloods, or the Crips, or whoever the gangs are, and you bring them in and you say I'm charging you all with a Class one misdemeanor. Right. Could you do that every month? [LB35 LB63]

DON KLEINE: It's still going to be based on what evidence you have to show that this person is a gang member and how you're going to prove that. Sometimes it might be a self-admission, sometimes it might be through associations. But I think from a prosecutor's perspective, it's still going to be something that we have to be able to prove beyond a reasonable doubt. But I understand your question is... [LB35 LB63]

SENATOR LATHROP: How many times can you prosecute them for it? [LB35 LB63]

DON KLEINE: Right. I think you prosecute them one time for being a member and if they continue though, in an ongoing enterprise with that membership, I think you can prosecute them again at some point in time because it's a different date. [LB35 LB63]

SENATOR LATHROP: But they almost don't have to do anything else but stay in...I don't know if they wear their hat a certain way or wear colors or whatever they wear, but

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as long as they're wearing them, can't you...the way the statute's written or the bill is written, can't you just keep charging them over and over? [LB35 LB63]

DON KLEINE: Well, I think that's what you need to maybe figure out as far as what sort of evidence do you need to show the person that's a member of a gang. Maybe they made a self-admission at one time. We prosecuted for that. They're walking down the street two weeks later, that doesn't mean we can necessarily just pick them up because two weeks earlier they made some admissions. [LB35 LB63]

SENATOR LATHROP: And maybe I'll ask the question differently. Do you know of any other status offenses that we use in criminal law besides...I mean, we do it in juvenile court if somebody is habitually truant or something like that, but... [LB35 LB63]

DON KLEINE: Oh, certainly, there's a number of cases or situations where we use a status to enhance a crime, a felon who is in possession of a firearm. The fact that they're a convicted felon and they have a firearm, they wouldn't be... [LB35 LB63]

SENATOR LATHROP: But he's done something different. You caught him with a firearm. [LB35 LB63]

DON KLEINE: Right. Well, I'm talking about the enhancement portion of the statute for the gang membership. Okay. But certainly, I see what you're saying again about simply being a gang member and prosecuting that person for being a member of an enterprise. I think the issue is that they're part of a criminal enterprise. It's not, it's not being a member of a club. It's a gang and there's a definition as to what that gang membership entails so I think that's where this bill comes from. [LB35 LB63]

SENATOR LATHROP: Are you okay with the way it's written? We don't have a problem with the fact that it...it just seems to me that we say, if you're a member of gang, you're guilty of a Class I misdemeanor and it doesn't say once a month, once a year. [LB35 LB63]

DON KLEINE: Why I think that's something we could look into. And certainly, if that needs to be tweaked that, I think, all the people involved would be willing to take a look at that. [LB35 LB63]

SENATOR LATHROP: Well, and the reason I asked you is because you'd be familiar with any status offense type statutes and how they're... [LB35 LB63]

DON KLEINE: I think it's a good question. [LB35 LB63]

SENATOR LATHROP: Thanks. [LB35 LB63]



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DON KLEINE: Okay. [LB35 LB63]

SENATOR ASHFORD: I guess I just have one question about a part of the bill that hasn't really been mentioned and that's the incarceration of juveniles in the DCYC, and related. Are you aware of that section? I was just trying to find it here. [LB35 LB63]

DON KLEINE: Is that under LB35 Senator? [LB35 LB63]

SENATOR ASHFORD: Yeah, it's in the amendments. [LB35 LB63]

DON KLEINE: I don't know if I have that. [LB35 LB63]

SENATOR ASHFORD: You may not have that and we're going through the amendment here. You know, this is at that issue, Don, that regarding overcrowding at DCYC, and I think we worked with Kim in your office, Kim Hawekotte and others over the last year. And basically it says, a juvenile taken into custody pursuant to a legal warrant of arrest shall be delivered to the probation officer who shall determine the need for detention of the juvenile as provided in Section 43-260.01. If detention is not required, the juvenile may be released without bond if such release is in the best interest of the juvenile, the safety of the community is not at risk, and the court that issued the warrant is notified that the juvenile has been taken into custody. It's a little loosening, really, the intent there. Do you see that issue, or is that something that you can live with? [LB35 LB63]

DON KLEINE: Well, I think it's something we could live with. You, yourself, and county board member Chris Rogers, I think, Nicole Goaley have also worked on this issue. [LB35 LB63]

SENATOR ASHFORD: Right. Chris has been real concerned with that issue and... [LB35 LB63]

DON KLEINE: Right. And I think it's something we could live with. I think the determination is why are they being arrested, I guess. [LB35 LB63]

SENATOR ASHFORD: Well, it would have to be nonrisk related. [LB35 LB63]

DON KLEINE: Right. So I would think any homicide, some violent shooting, something like that wouldn't fit into that category so I think that would be fine. [LB35 LB63]

SENATOR ASHFORD: Right. And then any ideas to try to get less in a crowd, overcrowding, and I know Chris Rodgers is very concerned about it and... [LB35 LB63]

DON KLEINE: Right. Absolutely. [LB35 LB63]

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SENATOR ASHFORD: Okay. Thanks, Don. Yes, Senator Rogert. [LB35 LB63]

SENATOR ROBERT: Don, maybe I, I'm just kind of catching up. I, maybe, should ask Mr. O'Brien this. On LB63, in the amendment, Section 16 addresses a drive-by shooting. I'm the country guy in here and I'm just going to play devil's advocate a little bit. Say you've got a guy sitting in the middle of his field, he shoots a deer or an animal or whatever it is, that ticks off the neighbor lady who doesn't like hunting, whose house happens to be at the other end of the field, could this be interpreted as doing that? Could we be putting a farmer in jail for five years because he shot an animal on his property? [LB35 LB63]

DON KLEINE: I don't think so. I think there's still a criminal intent issue there that the person has to be shooting at that occupied dwelling or vehicle or whatever it might be. Obviously, if they're shooting at an animal and, you know, accidentally hit something, that wouldn't fit the statutory requirements or the elements of crime. [LB35 LB63]

SENATOR ROBERT: Okay. That's fine. Thank you. [LB35 LB63]

DON KLEINE: Sure. [LB35 LB63]

SENATOR ASHFORD: Yes, Senator Lautenbaugh. [LB35 LB63]

SENATOR LAUTENBAUGH: Thank you, Senator Ashford. Thank you, Mr. Kleine, for coming today. I just want to make sure in response to some of the questions from Senator Council, I have an understanding of this. Is it illegal now to procure guns and give them to someone who you know can't otherwise buy them legally? [LB35 LB63]

DON KLEINE: Yes. Well, and certainly if you're talking about...normally that situation is a person who can't buy a gun, goes to someone else to procure that weapon for them, and it's a crime for that person to possess a gun or they can't have it, that certainly is, yes, it's a violation. [LB35 LB63]

SENATOR LAUTENBAUGH: Under state law there's a mechanism to prosecute that now, so we don't need to add anything to this bill for that. [LB35 LB63]

DON KLEINE: No. [LB35 LB63]

SENATOR ASHFORD: Thanks, Don. Thanks for coming down again. [LB35 LB63]

DON KLEINE: Sure. You bet. [LB35 LB63]

SENATOR ASHFORD: Let's, Ben...Chief, okay, Chief, you're next, and then Ben. Oh, Trish is next. Okay, Trish Sullivan, and then Ben, and then Chief Buske after that and

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then... [LB35 LB63]

PATRICIA SULLIVAN: (Exhibit 3) Senator Ashford, and members of the Judiciary Committee, my name is Patricia Sullivan, and I'm a professor of psychiatry and psychology at Creighton University. I'm here on behalf of Creighton University to strongly support the passage of LB63. As many of you know, Creighton is indeed located near where a lot of the gang violence is occurring and other violence for that matter. The students are very concerned about that. We've had a student who actually was shot. We've had others who have been robbed and so forth. And so we very, very strongly do indeed support that. What I would like to do here very briefly instead of giving you a lot of words and paragraphs and so forth, I've given you copies actually of power point slides without having to see them. (laugh) Go click, click, or whatever. But at any rate, we've done a lot of research at Creighton University on violence and we just would like to call that to your attention. We have been doing it since, from 1990 up and to the present. We've done research on child abuse and neglect, youth violence, family violence, community violence, and now we are actually getting into elder abuse. We have collaborative work across the university and the College of Arts and Sciences, the law school, health sciences, the school of medicine, as well as the school of nursing. We've had, at the end of page one there, where a lot of our federally funded research, a lot with children who have been victims of child abuse, some of the behavioral characteristics. We've looked at the incidence of violence actually in a hospital as well as in a school funding. Right now, we are funded by a grant from the National Institute of Health. We're actually looking at the violence exposure effects of children. And essentially our research subjects are adults, but we are aware of what type of violence they've been exposed to during their childhood. Some key findings are that youth violence victim and suspects. There's a picture here regarding the lead contamination, and what we've had basically occur is, and what that shows on over 43,000 subjects that was an archival study, is that basically if you live in a lead contamination area, you are an increased risk to be both a victim of violence, to be a perpetrator of violence as well as to have some type of special education placement. The other rest of it talks about one of the things that we've also found in that study is that there's kind of this trajectory from being a troubled toddler to, in early elementary school having behavior disorders, being put in some type of a mental facility, and then going to juvenile justice. Playing hopscotch back and forth and finally ending up in prison. I have here some things that we'd like to research, and what we need to do it. And my time is up, and I thank you for listening. I'd be happy to answer any questions you might have. [LB35 LB63]

SENATOR ASHFORD: Thanks, Trish, and your research, which I know something about, is significant because it's based on real case studies of real people. [LB35 LB63]

PATRICIA SULLIVAN: Oh, yes. [LB35 LB63]

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SENATOR ASHFORD: And I know you've got voluminous files that you've collected and I think this...again, this is the kind of work added to, on the prevention side, that this kind of information that is brought together with the law enforcement side results in, again, this sort of collaborative approach. How do we...what do we do to stop somebody from committing a crime before it starts. This violence research is key and I appreciate all the work you've done, so. Thank you very much. [LB35 LB63]

PATRICIA SULLIVAN: Yes. We just want to collaborate in any way we can. [LB35 LB63]

SENATOR ASHFORD: I know you do. [LB35 LB63]

PATRICIA SULLIVAN: All right. Thank you. [LB35 LB63]

SENATOR ASHFORD: And you already have, so thanks. Thanks for all your work. Ben Gray is next and then Chief Buske, and go get the Chief back to doing what he does so well. [LB35 LB63]

BEN GRAY: Mr. Chairman, and members of the committee, my name is Ben Gray and I'm part of an organization called New World Youth Development, which is a gang intervention organization. And what I am is the emergency team director of that gang intervention program. Let me say at the outset that 80 percent of the young people that are involved in violent activity or gang activity don't want to do what they're doing. And as we sit here and we talk about the violence that we see occurring, the violence is a symptom of a problem that our community in general and various other organizations have failed to deal with. We ran a program this summer. It was a summer jobs program and I would love to go into all the details of what we found out, but I can't do that. But let me say, the end result of what we did, we went out and we went to all of the middle and high schools in the Omaha public schools and we asked all the middle and high school principals to give us five of your men or women who were failing in school. We ended up with a significant number of those. And then we went to the streets and we got about 55, between 55 and 60 gang members. As a result of our summer program, we have now nine of those gang members who are actively employed full-time, two of them in construction. We have nearly all of the young people that were failing in high school doing a better job this year than they were last year. We have another 26 of those young men who were gang members who are now in some form of GED program or are back in the classroom. This is an effort at intervention that we believe very strongly works. And it is an effort to really help us understand what makes them, what makes young people do what they do. And as I said at the beginning, a lot of what they do and a lot of the reasons for it are issues that we have not addressed up to this point in a significant way. I can sit here and tell you that I know for sure that unless we do the kind of intervention that I know is necessary and that we in New World Youth Development believe is necessary, you are not going to stop these young people from procuring

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weapons. And the reason for that has to do with them feeling as though they have to protect themselves from other people. And so they're never going to give up their guns until we start really addressing the problems that cause the violence in the first place. We now run a program, when I say, New World Youth Development, we now run a program that has hired and is now working and on the street a number of ex-gang members who work with the gang unit, who work with a number of other folks in uniform patrol and we closely work with the Chief of Police. The one thing I will say in closing, and I'll be glad to answer questions, is that during the months of July and August when we were running our program, most of the gang members we had were south of Ames and if you look at the crime stats that the Police Department releases monthly, you will see in the months of July and August that last year there were eight homicides, this year there were two. Crime was down significantly, something like 37 percent in the southern part, south of Ames street where the gang members that we had control of. So it is an effort that we believe...as a matter of fact, we know works. It needs to be enhanced and we really need to understand the reasons for the violence before we can begin to address it. We pass laws far too often without understanding the unintended consequences of those laws that we pass. Thank you. [LB35 LB63]

SENATOR ASHFORD: Ben, your work is....has been amazing, and I know, Senator Council has been involved and it's amazing work. Any questions of Ben? [LB35 LB63]

SENATOR LATHROP: No, but you know what, I applaud your efforts. You know, I was up at the CeaseFire hearing and listened to you and others talk about the importance of finding jobs for young people in north Omaha and the effect of finding those jobs and keeping those folks engaged in something constructive and the effect that has on the heavy, heavy crime rate. [LB35 LB63]

BEN GRAY: Senator Lathrop, I will tell you that our organization has been in existence since September and right now, a couple of people were up yesterday and we literally had somewhere in the neighborhood of 30 parents or young people who are gang members coming up to our program looking for assistance. [LB35 LB63]

SENATOR LATHROP: Yeah, you don't get the credit you deserve, but I appreciate it. And I hope you're able to partner with the Omaha Chamber of Commerce and find jobs this summer, and others. [LB35 LB63]

BEN GRAY: Right now we have partnerships, I will say this to you Senator Lathrop, we have partnerships now with the Omaha Police Gang Unit, Uniform Patrol, University of Nebraska at Omaha, the Douglas County Youth Center, all of the county attorneys within the three county area. We meet every Tuesday and we work on, we work collaboratively together. We've been at several basketball games where the Gang Unit and our team worked in unison and I can't tell you the amount of violence that we stopped as a result of those collaborative efforts. [LB35 LB63]

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SENATOR LATHROP: Yeah, no newspaper articles, but thanks. [LB35 LB63]

SENATOR ASHFORD: Yeah, it's absolutely incredible. And one of the things that I'm...and when we started and went to Chicago last April, Ben, and you know you were ten steps ahead of me when we saw CeaseFire and you went...we met the ex-offenders and the people that are on the streets. We know, we know how this works. One of the things that's most impressive to me and that I think what this Office of Violence Prevention is all about, is the fact that you've already done the collaboration with Chief Buske and Chief Warren. I mean, Chief Warren and Chief Buske are at everything I ever go to and I don't go to everything obviously, but they're always there. You know, Teresa Negron was with us when we went to Chicago and Alex Hayes and, you know, to me this collaboration with the Omaha Police Division and Don Kleine's office working with Kim Hawekotte before she left. I mean, I think we're on to something here. I think we're on to something and if we can just bring the state in and collaborate and keep the funding going, wouldn't you think we can stop these kids? We could reduce these shootings. Don't you think we can do it? [LB35 LB63]

BEN GRAY: Senator, I believe that these young men, as I said at the beginning, 80 percent or better don't want to do what they're doing. When we get them, when we get them even in a room together and we did this recently with...and Chief Buske and former Chief Warren will tell you that 37th Street gangsters were one of the hottest groups in the north Omaha area. We now have collectively gained all of their trust and they are at our, they're at our office on a regular basis. [LB35 LB63]

SENATOR ASHFORD: They're not dumb, are they Ben? (laugh) I mean you get them going in the right direction and they're going to be, you know, flying to the moon. [LB35 LB63]

BEN GRAY: Absolutely, and we've flown below the radar intentionally, Senator Lathrop. We want to get our program up and running before all of the media glare and everything kind of happens to us. [LB35 LB63]

SENATOR ASHFORD: That's what you get down here, is that media glare. All right, thanks Ben for all your work. [LB35 LB63]

BEN GRAY: Thank you all. Thank you. Appreciate it. Oh, I'm in favor of LB63 just in case I didn't say it. (laugh) [LB35 LB63]

SENATOR ASHFORD: Thank you. We put you down as a yes, so. Chief. [LB35 LB63]

ERIC BUSKE: Good afternoon, I'm Eric Buske, B-u-s-k-e, I'm Chief of the Omaha Police Department. Chairman Ashford, and other members of the Judiciary Committee, I

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appreciate the opportunity to testify here this afternoon. The Omaha Police Department supports this legislation. I feel that the bill's enhancement of the punishment for illegally possessing firearms, firing into occupied dwellings, or from a vehicle, and/or using firearms while committing a felony crime, emphasizes how serious and destructive these crimes and illegal guns are to our communities. The antigraffiti provision recognizes that this is a crime that's much more than a simple vandalism. Graffiti can and does escalate violence between various groups and it is important that law enforcement and prosecutors have the tools necessary to appropriately address it and hold offenders accountable for their actions. Lastly, the creation of the Office of Violence Prevention is a proactive prevention strategy that will help ensure that the entire criminal justice system and our communities are doing all that we can to stop violence from occurring in the first place, which, of course, is the best option of all. Thank you. And I will answer any questions that you have. [LB35 LB63]

SENATOR ASHFORD: Chief, thank you for your...and actually, we didn't say that ejection deal when you get to the red, and if we had to flash the red, it's a problem. But you got it done. But thank you again, as I've thanked everybody for everything you're doing. Any questions? Thanks, Chief. Mark, would you like to come up, and then Tom and Lisa is back there. Bruce, I know, we're all...get through everybody here quickly as possible. [LB35 LB63]

MARK YOUNG: Good afternoon, Chairman Ashford, and members of the committee, my name is Mark Young, Y-o-u-n-g. I'm the Hall County Attorney. I am here today on behalf of the Nebraska County Attorneys Association and my office to urge you to support LB63 as amended with LB35. I'm also here specifically to say this is nonurban problem. Everything from graffiti...I thought about bringing along my trash can lid that was tagged about three months ago, to the dog fighting, to the drive-bys, to the murders, occurs in my jurisdiction of less than 50,000 people. And what I've seen in particularly the last five years is significant creep from relatively big towns like Grand Island, Kearney, into smaller communities. And if you don't have a problem or you don't think you have a problem now in small town Nebraska, it's coming. Cheap rent and isolation are really pretty attractive to some of these folks. LB63 specifically addresses some questions and some problems that we've had in our judicial district and county court concerning bond setting and about weapons charges and well...is a very carefully crafted response to the overall issue. One of the parts of my job that I don't like very much is going to murder scenes as a county coroner. Every time I'm there, I feel a very profound sense of failure. I think this bill, particularly with the violence prevention provisions added in and the changes to the criminal code, will lessen the times we're going to have to make those kind of trips all over the state, not just in Omaha. Because this is a problem we have to address as a state, not as local communities. I'd urge you to support the bill as amended and I'd be happy to answer any questions. Thank you. [LB35 LB63]

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SENATOR ASHFORD: Well, Mark, as usual, thanks you for your testimony. Any questions of Mark? Thank you for coming. [LB35 LB63]

MARK YOUNG: Senator, I did forget one thing, if I may. Real quickly I wanted to address the question about the hunting in the open field if I could, just from the outstate kind of perspective. [LB35 LB63]

SENATOR ROBERT: Yeah, please do. [LB35 LB63]

SENATOR ASHFORD: From an outstate perspective. We allow that every once in a while, about five minutes out of the testimony, we can... (laughter) [LB35 LB63]

MARK YOUNG: Okay. Sorry. The way the bill is drafted actually takes care of a problem we have with doing drive-by prosecutions, about where they're aiming. But I still believe the language in the bill addresses specifically not the intent, but it's not going to be an issue. Also, you know, you've got to trust your judges and juries and prosecutors not to do stupid things. Now I know, occasionally, that can be an issue but...and I know, when you have houses getting built out into the county more and more, that can become more of an issue. But this is specifically designed for, I believe, to address where there is some intent at a drive-by rather than an intent of...for example, we've had a case where they were shooting at a car and they missed and hit the house and there's a little kid in the house. We need to be able to address that without punishing or unduly jeopardizing people's right to hunt on ground where they have permission to hunt. Thank you. [LB35 LB63]

SENATOR ROBERT: Thank you. [LB35 LB63]

SENATOR ASHFORD: Thank you, Mark. [LB35 LB63]

MARK YOUNG: Thank you. [LB35 LB63]

SENATOR ASHFORD: Tom Warren. [LB35 LB63]

THOMAS WARREN: Good afternoon, Chairman Ashford, and members of the Judiciary Committee. My name is Thomas Warren. I'm president and chief executive officer of the Urban League of Nebraska, and I'm here in support of LB35, specifically Sections 8 through 15 referred to as the Office of Violence Prevention and the Violence Prevention Act as well as LB63 beginning, I believe, in Section 30. As former Chief of Police of the Omaha Police Department I know firsthand, that stricter enforcement and enhanced penalties will go only so far in reducing violent crime. In my personal and professional opinion, more emphasis should be placed on prevention and intervention strategies. In 2008 we did experience an increase in homicides in the city of Omaha and we have a persistent problem of violent crime being committed by youthful offenders. There have



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been successful strategies implemented around the country where cities have reduced their homicide rates by implementing comprehensive prevention and intervention strategies. I know we talked about the CeaseFire program in Chicago but there's also another program, for example, in the city of Milwaukee, Wisconsin. They had a 32 percent reduction in their homicide rate last year. They have a model program in their high schools called the Violence Free School Zones where ex-offenders are hired by community-based organizations to work in schools as youth advisors. They mediate conflicts and intervene in potential disputes between rival groups. In my opinion, as a state we don't do enough or we don't commit enough resources that allow youth development organizations to focus their attention on at-risk youth. An establishment of Office of Violence Prevention would allow for the research of best practices and implementation of the programs that were evidence based. While a turn to strategies must be considered if we are to effectively address violent crime issues and keep our citizens safe, the Office of Violence Prevention will provide services to the violent youthful offender, which could include re-entry programs upon their release from detention facilities and career counseling so that they could become productive citizens. And with that, I will answer any questions that you may have. [LB35 LB63]

SENATOR ASHFORD: If we could only bottle you, Tom, and reproduce more of you, we'd be in good shape. Any questions of Tom? Let me, and you've looked at a lot of these programs, would it be fair to say that having this coordinated effort to look at all the programs and analyze them and then to try to develop a program that would work in Omaha or Grand Island or Lincoln, that that's a valuable thing to do? [LB35 LB63]

THOMAS WARREN: I think that's critically important and I'm sure my colleagues would agree that you have to customize a strategy for your local jurisdiction. You cannot apply a cookie-cutter approach. Omaha is not the same as Chicago. Omaha is not the same as Cincinnati. Omaha is not the same as some of these other municipalities that have experienced increasing gun violence. And so, I think, in general there are strategies with respect to working with the university, utilizing research, working with community-based organizations, as well as utilization of ex-offenders in intervention capacity. I know in Chicago they call them interrupters. But I think that's critical. That's an alternative approach that really hasn't been utilized to its full capacity in the metropolitan Omaha area. And I know, Mr. Gray, alluded to some success that he experienced last summer by utilizing that approach. [LB35 LB63]

SENATOR ASHFORD: Just one more question. How do you, how do you know, or how can you determine a hot spot and how do you, how from a law enforcement perspective what tools are out there to...and it can't be prophetic. I mean, you don't know exactly when something is going to happen, but what is it that you look for to determine whether there's an incident may happen in the future? [LB35 LB63]

THOMAS WARREN: Well, you know, speaking on behalf of my successor, I know

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within the Omaha Police Department we utilize technology quite a bit. We would use crime mapping data, we would be able to illustrate where the crimes were occurring, when the crimes were occurring with a certain degree of probability. We'd look at a very scientific workload analysis in terms of cost of service and looking at the nature of those costs of service. And I know that on a weekly basis, the Omaha Police Department still prescribes to the CompStat approach where you bring in the unit commanders from the Criminal Investigation Bureau as well as Uniform Patrol, where you sit down and you identify where those crime transit patterns are occurring and then you allocate the resources accordingly. And of course, there are...it must be timely, because many of these incidents are spontaneous. And if you have an outbreak of gun violence, it's critically important that you address it immediately. You know, I know we talked about a lot of data and some anecdotal, some factual, as you recall in 2007. In June of 2007, as I recall, we had 30 shootings in 30 days. We had a terrible summer, but it was important that we implemented the strategy to respond and to address that outbreak of gun violence. And by the end of 2007, there had actually been a 17 percent reduction in gun assaults. And so, law enforcement has been effective at managing the crime and responding to the crime. What needs to occur is for more emphasis to be placed on prevention and intervention. [LB35 LB63]

SENATOR ASHFORD: And it can be done in your opinion, and that intervention piece which, some of which may involve law enforcement and some may involve nontraditional intervention techniques are viable options. [LB35 LB63]

THOMAS WARREN: Absolutely, and I think it's critically important that these entities work cooperatively with one another. And, of course, that you do prescribe some alternative approaches if you truly want to reduce violent crime. I mean, you can manage it, but if you want to reduce and prevent violent crime, you must prescribe to alternative strategies. [LB35 LB63]

SENATOR ASHFORD: Thank you, Tom, very much. I think that's...seeing no more questions. Thank you. Lisa. Is it Lisa? I'm sorry, I've got my...yeah, Lisa, Lisa. That is Lisa. I thought it was Lisa. And Bruce and then we'll go to see who else is out there. Okay. Thank you. [LB35 LB63]

LINA LANDER: Well, good afternoon, I'm Lina Lander and I'm... [LB35 LB63]

SENATOR ASHFORD: Well, Lina, I'm sorry. I apologize. [LB35 LB63]

LINA LANDER: That's okay. I'm assistant professor of epidemiology at the College of Public Health at the University of Nebraska Medical Center. I'm here as a Nebraska resident and I'm not speaking on behalf of University of Nebraska. Thank you for the opportunity to support LB35 today. I have a Doctor of Science degree from the Harvard School of Public Health and I'm trained in occupational epidemiology and injury

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prevention. I support dealing with firearm injuries in Nebraska as a public health concern, treating problem as a public health issues involves several disciplines in public health, including epidemiology, biostatistics and geospatial mapping. The main focus of public health approach is prevention of diseases in population rather than treatments in individuals after the disease occurred. This is usually accomplished by data collections through surveillance, data analysis, and implementation of data driven intervention. The same approach has been applied since 1854 when John Snow noticed that cholera deaths were not occurring at random in London. He superimposed deaths on the map of London that included location of water pumps and found that the majority of deaths occurred around one specific pump. Snow then removed the handle from the water pump, which forced residents to obtain their water elsewhere. This was closely followed by declining cholera outbreak and rather than removing the handle from the pump, we want to remove fingers from triggers. We believe that the same approach can be applied to gun violence by focusing on prevention to reduce gun related injuries in Nebraska. And the College of Public Health at the University of Nebraska Medical Center has expertise in epidemiology, birth statistics, behavioral health, and community outreach. I strongly support the Center for Violence Prevention to bring together experts from various fields and provide funding for research programs aimed at reducing violent crimes. I agree with board membership in recommending including public health practitioner on the board. Thank you. [LB35 LB63]

SENATOR ASHFORD: Didn't we do that? There's no public health person on there? [LB35 LB63]

LINA LANDER: I didn't see that. [LB35 LB63]

SENATOR ASHFORD: I'll have to speak to the Attorney General and see if that's permissible addition. Thank you, Lina, very much. And thanks for... [LB35 LB63]

LINA LANDER: Thank you. [LB35 LB63]

SENATOR ASHFORD: Bruce. How many other testifiers do we have? [LB35 LB63]

BRUCE FERRELL: (Exhibit 4) Good afternoon, Mr. Chairman, and fellow members of the Judiciary Committee. My name is Bruce Ferrell. I retired after twenty-two and a half years of service with the Omaha Police Department, the last nine years as a detective in the Gang Intelligence Squad. I serve as the Nebraska Chapter President for the Midwest Gang Investigators Association. I'm also privileged to serve as the chairman for the entire organization. For the past twenty plus years we've seen violent street gangs and their members expand across our state and communities. The recent 2009 National Gang Threat Assessment reveals information that our gang members are mobile and are moving from the urban areas to smaller communities and the rural areas. The threat assessment estimates there are over a million gang members in the United States. I

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have attached a synopsis of the Threat Assessment as part of my testimony. Omaha has had its share of gang violence, and has approximately 2,800 gang members and associates committing crimes at the end of 2008. However, I believe that in addition to that total there are approximately 1,000 to 1,200 more gang members and their associates across the state doing the same. We have seen and heard about gang crimes occurring in communities around the state. Where communities like Columbus, saw their first gang related drive-by shooting occur last summer. Or recently in Dorchester, a gang member told his gang he wanted to join them, then changed his mind and joined a rival gang. The original gang went to his home and beat him with weapons in retaliation. In Crete, Grand Island, Alliance, and other communities, gang members paint their graffiti and commit other crimes. I'm here today to speak in support of LB63 and AM212. I have read these bills as presented and drafted by the Nebraska Attorney General's Office. This bill will provide the necessary tools for law enforcement and the courts to deal firmly with our most violent gang members and at risk youth. By expanding the penalties for violent crime and addressing juveniles with firearms, I believe it will send a strong message to those who wish to commit violence in our communities that it will no longer be tolerated. It will provide more tools for our judiciary to keep violent offenders off the streets and detained while waiting a trial. By introducing a new provision that punishes individuals who coerce, intimidate, or assault another to join or keep them from leaving a street gang. This bill will also make individuals accountable for defacing property with graffiti. Finally, it addresses the need to protect law enforcement, correctional officers and probation and parole officers should they be assaulted by these individuals. AM212, with its creation of the Office of Violence Prevention, will complete the circle that will give Nebraska an opportunity to have a comprehensive gang strategy. This strategy must include prevention and intervention programs for our at risk youth. The Office of Violence Prevention, its mission and working with and developing partnerships in these programs and organizations can give youth who want to get out of gangs or resist their pressures a way to do so. LB63 will provide the stick, while AM212, the carrot. I believe without these two pieces of legislation we lose the opportunity that has presented itself for the greater good of the state and its citizens. It will not be a quick or easy fight but I believe that there is a chance to keep more mothers and families from having the tragedy and loss of losing a loved one to gang violence. With these thoughts in mind, I ask the committee to advance LB63 and AM212 for consideration. Thank you, and I would be happy to answer any questions you may have. [LB35 LB63]

SENATOR ASHFORD: Thanks, Bruce. And thanks for helping us throughout the year in developing these proposals. Hank Robinson, I think, is the last...unless I'm missing somebody. Now it's a little out of the ordinary, but I have asked Hank for a year to work without any compensation (laugh) or anything, and he's spent countless hours working on this project, so I'm going to give you 5 minutes, Hank, here. [LB35 LB63]

TIMOTHY ROBINSON: (Exhibit 5) Thank you. Please enter the appearance of Hank

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Robinson, University of Nebraska School of Criminology and Criminal Justice. You know, to hear the testimony around here today it seems like everybody is holding hands and singing "Kumbaya" on these penalties and on the Office of Violence Prevention, but for those of us who have been here before we know that if there's anything that's going to send the needles skipping across the record, it's when we get to the point of how much everything is going to cost. I'm going to focus my comments on the relative costs of the enhanced penalties and Office of Violence Prevention. I present these cost considerations from a neutral standpoint because there's clearly deterrent and incapacitation effects from these increased penalties. The penalties in the state of Nebraska are behind many other states in being updated. But one of the most common fallacies of thought, when people start talking about increasing penalties, is that somehow they're cost neutral. LB35's penalties, according to the fiscal note as prepared by the Department of Correctional Services, carries a price tag of almost \$6 million a year. LB63 and the versions of penalties it has in it come in at \$7.5 million a year. Now I think that the urgency for these measures has been made. I think that the need for these, the argument in favor of the need of these things being passed has been made, but ultimately what's going to happen is the committee and the full Legislature is going to be asked to prioritize its spending obligations. There's no way around...there's no way around the fixed costs of putting somebody in prison. Every person that goes to prison and every year that they spend in prison costs the state of Nebraska approximately \$26,844 a year across all institutions. Our Department of Corrections budget right now is averaging around \$300 million per biennium, okay? We spend almost nothing on the types of programs that Ben Gray has been lauded for today and yet, in a University of Nebraska study that we prepared on behalf of the Unicameral just two years ago, we showed that if a program exactly like Ben Gray's program was stood up for 1,000 offenders a year in Douglas County it would cost about \$1,000 per person and it would cost about \$1 million a year then for 1,000 people. In Douglas County alone there's about 14,000 offenders a year who could benefit from that and forestall having to go to prison. Now by comparison of the costs for increasing our penalties, let's look at what that means. With only a 10 percent success rate out of 1,000--we're talking about 100 people--only a 10 percent success rate, they're saving \$2.6 million a year against the state's budget. Now if the Office of Violence Prevention is put in place, if these evaluation measures are put in place where we're actually tracking what works and what is ineffective, 10 percent success rate is a given. And there's no reason not to believe that it can be higher than that, as much as 50 percent. These men and these women who are committing these offenses are not lost souls. They may have taken awhile to come around but we know that with the proper measures and with support they can be, and that amounts to significant savings to the state of Nebraska over time. So I'll be glad to take your questions at this time. The only other thing I want to hit, I want to thank the...I want to thank Senator Ashford, in particular, for bringing the warrant measures through. It may not be obvious to the senators who have reviewed it so far but right now the counties are spending thousands of dollars a year detaining juveniles on failure to appear warrants where there's really no risk to the community or

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to the youth to simply be turned around and released. There's been examples from Douglas County where a juvenile has been brought in on a failure to appear for a skateboarding ticket and spent six weeks or more in Douglas County Youth Center at \$150 a night. So there will be a fiscal impact to probation to enact...to simply have all those cases go through probation, but, again, if you spend the money up front you will save it on the back end. And there's no reason why we should be spending, you know, \$1,500 every ten days because some kid was...didn't have his act together to show up for a hearing on a skateboard ticket. So I urge you to support the warrant provision in particular. [LB35 LB63]

SENATOR ASHFORD: Thanks, Hank. Senator Lathrop. [LB35 LB63]

SENATOR LATHROP: You know what, I do have a couple of questions after I've sat and listened to this today, because after I went to the CeaseFire hearing, I'm thinking we should be spending a lot of money on those kind of programs, keeping these kids busy so that they're not involved. And really, a lot of them join the gangs because they don't have the family structure and that these groups, like Ben Gray's group, kind of give them some structure other than resort to gang activity. That's sort of what I took away from that. Would that be fair? [LB35 LB63]

TIMOTHY ROBINSON: That's right. And like we...oh, I'm sorry, go ahead. [LB35 LB63]

SENATOR LATHROP: Well, and so I...here's the question. By increasing the penalties, is that effective in...I know I've heard law enforcement's perspective, your...you may have more of an academics perspective, but increasing the penalties, does that...are we going to stop things from happening? [LB35 LB63]

TIMOTHY ROBINSON: You know, what Dr. Sullivan said before I got up here is that there's a strong correlation between people who have grown up in the presence of lead and the brain damage it's caused because of that, and the likelihood they're going to get in trouble. There's also a high correlation between kids who can't keep their act together because they don't have a support network to help them get through school, keep them fed, keep them in a house where the utilities are turned on and everything else, right? Do you...I mean it's inconceivable in this time period that someone would think that a person in that desperate a situation is to the point where they're worried about whether or not they're going to get an extra year in prison or whether they're going to get an extra two years in prison. [LB35 LB63]

SENATOR LATHROP: And that leads me...we had the discussion on the death penalty and somebody came in I think from Denver and made this point, which struck me, which is it's probably more of a deterrent to have more law enforcement out on the...out on the streets than it is to give people longer sentences... [LB35 LB63]

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TIMOTHY ROBINSON: Absolutely. [LB35 LB63]

SENATOR LATHROP: ...or give them the death penalty. [LB35 LB63]

TIMOTHY ROBINSON: Absolutely. [LB35 LB63]

SENATOR LATHROP: And that the deterrent is in the risk of getting caught and not ultimately what the penalty is. [LB35 LB63]

TIMOTHY ROBINSON: You know, the other thing about it is that one of the things that's aggravated me for the last couple years, in all the discussions about gun violence in Douglas County and around the state, in particular, is it's as if the police departments and the prosecutors and the U.S. Attorney's Office have somehow forgotten to do something or that they're not moving with all the tools at their disposal to make a difference. And I can tell you, as the national evaluator for the U.S. Attorney's Office and Project Safe Neighborhoods for the last five years, and having worked with the Omaha Police Department for the last three or four years in evaluating their programs, they are doing everything. They're doing everything feasible. But just like when there were 400-and-some people at a conference just two months ago in Omaha that was sponsored by the federal Department of Justice, they stood up in front of the room and everybody concurred, every single person in that room concurred that we cannot arrest and imprison our way out of these problems. [LB35 LB63]

SENATOR LATHROP: It does seem to me, and I probably should have asked this question when the chief was up here, but whether if we spend \$6 million more a year, would you rather have it...spend it on police officers or more prison time for these people? Because it does...that's one piece that's probably not covered by this, which is more money for places like Omaha and Grand Island, places like that. [LB35 LB63]

TIMOTHY ROBINSON: In terms of the research, the money would be far better spent directly on enforcement support than it would be on incarceration. [LB35 LB63]

SENATOR LATHROP: Okay. Well, I appreciate your work on this. I know you've worked with Senator Ashford very close on this and I...you've sold me on the prevention. You really have. That's money well, well spent and we'd save money in the long run. Thank you. [LB35 LB63]

SENATOR ASHFORD: Hank, yeah, thank you for your endless hours of work on this and your candor... [LB35 LB63]

TIMOTHY ROBINSON: Yep. You're welcome. Thank you. [LB35 LB63]

SENATOR ASHFORD: ...which is appreciated. Do we have any other proponents for

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this bill? Any opponents? Any neutral testifiers? Senator Friend, would you like to partially close and then I'll sum up very briefly so you can... [LB35 LB63]

SENATOR FRIEND: (Exhibit 6) Thank you, Chairman Ashford, members of the committee. Just to say thank you. I, too, was impressed with the last testifier, except that I didn't come in here to sing "Kumbaya" with anybody and I don't think...it's not my MO. There's such a thing as specific deterrence. There's such a thing as proactive, creative deterrence. They're both in this bill. I as a policymaker, I'm not an academician, I as a policymaker represent 33,000 people in my district who are afraid of a certain type of people and they're afraid for good reason. That's where specific deterrence comes in. That's why we have half the law enforcement community in here. But we also realize that creative and proactive deterrence works as well. That's why they're here too and that's why it's taken so long to get through this process. I'm here because I have people in my district and around the city of Omaha that are afraid of a certain type of person and it's my job to try to do something active and real to deal with the problem. I believe in this bill too. I don't think it's pie in the sky. Thank you, Chairman. [LB35 LB63]

SENATOR LATHROP: Can I ask a question? [LB35 LB63]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB35 LB63]

SENATOR LATHROP: I've been trying to read, Senator Friend, I've been trying to read the amendment while people have been testifying and I got to Section 14 and it has to do with enhancing possession, turning possession of a firearm by a felon into possession of firearm by a person...a prohibited person. And so we're going to make it a felony if someone has had a domestic relations order entered against them, if they carry brass knuckles or another... [LB35 LB63]

SENATOR FRIEND: It's already a felony. We're actually just increasing it. We're... [LB35 LB63]

SENATOR LATHROP: We're increasing the class of people, aren't we, to include domestic relations...people that have been convicted of a domestic relations violation or someone who has a validly issued domestic violence protection order? [LB35 LB63]

SENATOR FRIEND: No, I don't think...I don't think in the green... [LB35 LB63]

SENATOR LATHROP: I'm just wondering if the bill...I haven't got through the whole thing, as I'm sitting here trying to read it, but does it cover other things besides gang activity? Has this become kind of an omnibus... [LB35 LB63]

SENATOR FRIEND: Yeah. Actually, I think it's...I think it's a stretch just to call it a gang bill. I mean we have...I think it's a...I think it's a gun violence bill, it's a...I think it's a



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plethora of things, I mean, so you know the fact that my opening... [LB35 LB63]

SENATOR LATHROP: I'll get through the whole thing and... [LB35 LB63]

SENATOR FRIEND: Yeah. [LB35 LB63]

SENATOR LATHROP: ...catch you some time. Believe me, I support the whole...everything that's going on here, but I also...my comments weren't to suggest that I'm critical of enhancing the penalties,... [LB35 LB63]

SENATOR FRIEND: And they weren't taken that way. [LB35 LB63]

SENATOR LATHROP: ...but to recognize Hank's point which is we should spend a little bit more money up front too. And I don't know...I don't know where we'd get it or what we should do. And I see people in the front row nodding behind you. I guess I'll work with Senator Ashford and try to find all the stimulus money we can or something, but... [LB35 LB63]

SENATOR FRIEND: Yeah, Senator Lathrop, and I don't think I've ever...I don't think I've ever stood up and said if somebody wants to be out on the floor and say, you know what, you're one of those Reaganites and you don't like to spend money and, by the way, the more people you put in prison the more it's going to cost us, I will raise my hand and tell everybody in my district that we will spend that money because it's important money to spend,... [LB35 LB63]

SENATOR LATHROP: Right. [LB35 LB63]

SENATOR FRIEND: ...and they will understand that. So I don't disagree with anything that Hank said. What I'm saying is I'm not here...we're not here to draw that divide. We're here because the divide has been driven into. [LB35 LB63]

SENATOR LATHROP: Sure. And... [LB35 LB63]

SENATOR FRIEND: I mean this could have been a really, really weird situation on this particular day. [LB35 LB63]

SENATOR LATHROP: Right. [LB35 LB63]

SENATOR FRIEND: It could have been hard line. It could have been sugar versus spice, and I don't think that's appropriate. [LB35 LB63]

SENATOR LATHROP: Well, and Hank's remarks started out by saying us enhancing some of our penalties is overdue, so I don't think that... [LB35 LB63]

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SENATOR FRIEND: He did. He did. [LB35 LB63]

SENATOR LATHROP: ...I don't think that there is that divide today but I do recognize, and particularly sitting through the CeaseFire hearings this summer, that if we could keep these kids busy, particularly in places like northeast Omaha, we have a lot fewer occasions to arrest people and put them in jail. [LB35 LB63]

SENATOR FRIEND: I agree. [LB35 LB63]

SENATOR LATHROP: So anyway... [LB35 LB63]

SENATOR FRIEND: Thank you. [LB35 LB63]

SENATOR ASHFORD: I'm going to try to... [LB35 LB63]

SENATOR LATHROP: Partially close? [LB35 LB63]

SENATOR ASHFORD: ...do a partial other closing just to, really, to thank everyone. I've been in a lot of hearings over the 11 years I've been here and I knew going in when I started this effort that we would have a hearing today where the proponents sometimes are opponents to each other. And I've been in such...involved in such bills or in hearings where some of the people in this room have been opposed to each other. I think what we've got here is the opportunity for convergence around prevention and intervention. There's no question that we need to enhance the penalties for gun-related violence and gang-related violence. There's no question about that. There's absolutely no question that it's expensive to incarcerate somebody. It's expensive to take care of somebody who's been shot in the public health arena and the hospitals and the emergency rooms. It takes a terrible toll on families. So anything we can...let me just say this. We have people in this room, who have been in this room today, are absolutely at the top of their game. They can solve this working together. I don't care what side they were on before today, they can work together to get this done. I'm just going to finish. Why do I care so much? Because everybody cares so much, to start with, and I'm no different than anybody else. But I did have many occasions to go to crime scenes, nowhere near what my friends back in the room here have been involved with, but in my capacity at the Housing Authority. And I remember one day vividly, 10:00 in the morning and there had been a shooting and I went to the scene and there was an older woman who was sweeping her front porch and she is in her eighties. And actually, I had met her before and she's a wonderful lady and I went up to her and I said to her...maybe I've told this story before and if I have I apologize, but I went to visit her and I went up to her and said, how are you doing, and she said, fine. And she invited me into her house, in her apartment, for coffee and we sat down there and it was one room and a bedroom and a kitchen, and over her recliner chair, which she sat in to watch the news at 10:00 every

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night, there were bullet holes, which had...were the result of a drive-by shooting the night before where three children had been wounded; nobody killed in that particular occasion. And I asked her, I said, how are you doing? I mean, in my capacity at the Housing Authority, we could find her another apartment if she felt that she needed to move. And she said, you know, Brad--and I was really honored that she called me Brad, quite frankly, not Mr. Ashford, none of that junk but Brad--and she said, you know, I trust that we're going to get through this and I trust that the police are going to help me and I trust that this shooting will stop. She said, I'm 85 or 86 years old; I only care about the children, I don't care about myself and that's why I can't leave this building. Really, in the end of the day, that's what's going to get us out of this mess, it's that lady, who I haven't seen in a couple years but I need to go visit again, and all the other community people in Omaha who are so incredibly involved in trying to stop the shooting. And I guess my challenge to all of us is to get this thing done. I have a letter here making this my priority bill and it is and I'll file it today. I just believe so sincerely that we have to stop the shooting. I think we can do it. I think we can cut it in half and cut it by 75 percent and move forward and make this a safer community and a safer state. So I appreciate the indulgence of the committee in hearing, spending time hearing this. Many of you have heard this, this summer in the other hearing but...and thank everybody for coming, with that. (See also Exhibits 7-12.) [LB35 LB63]

SENATOR LATHROP: Thank you. That will close our hearing on those two bills. [LB35 LB63]

SENATOR ASHFORD: All right. Let's...Senator Pirsch is here and LB508. Here we go.  
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SENATOR PIRSCH: Members of the Judiciary Committee, I am Pete Pirsch, representing the Legislative 4th District, the sponsor of LB508. Just a quick overview of LB508: LB508 prohibits certain gang-related initiations. Under LB508, anyone who endangers the physical health, mental health or safety of another person or causes another person to engage in any criminal act or causes another person to be subjected to sexual contact for the...and in all three cases, for the purpose of initiation into any criminal gang shall be guilty of a Class I misdemeanor. I think when you look at gangs today, how they're organized and their effect upon society and how they can just devastate a community, you don't have to look far. You can see in many communities throughout Nebraska their pernicious effects. The reason they're forming is the big dollars at stake in terms of what they can deal in: guns, drugs, other crimes. And so...and unfortunately it is...membership is born of...in ignorance and it's a chain and, unfortunately, you see cycles of families caught up into gangs. And I can tell you, as a prosecutor for many years, I've seen generations fall, you know, end up dead or extremely injured as a result of their membership in gangs. And so, you know, and having had that prosecutorial experience, now moving on as an attorney in Omaha and working within the juvenile court system for some of the cases, you see how...the effect

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that gang membership has on young people's lives in that particular city, although throughout the state of Nebraska, and how it is essentially devastating the entire city. We have...I can tell you, I can relate to you a case just within the last month or two where I am working with...as an attorney for a juvenile who has...member in a gang and just had a child and, you know, a young lady, 17 years of age, and has a young boyfriend who just was gunned down and killed within the last two months. And so now at that age she's raising a child and, unfortunately, it was...it's all gang-related. And so I don't have a positive...it's hard to have a positive outlook on the future of these, the kid, the baby here, this young woman, and when she's surrounded by that environment. So gangs have really played a really horrible role I think in the lives of young people around the state. So I think we need to focus our attention on, in many ways, of what we can do at taking aim at eliminating this problem. So gangs are, and then there's kind of an interesting quote from the book, Into the Abyss, it says...it applies to gangs and it says: An organization that hopes to exist over time must create or recruit new members or it will perish. So that's true whether it's a Rotary Club or a Boy Scout pack or if it's just a street gang. They need to recruit if they're going to survive. And this, you know, they recruit from schools, the street, work, kids in the neighborhood. There's a great number of areas that they're recruiting kids into their gangs. And so what this bill is aimed to do is to get at that initiation, to deter another...put another tool in the arsenal to make sure that kids stay out of gangs. Because once they're in gangs, I assure you it's a fast descent. And so this bill is designed to do that. I know there are probably some questions about how do you define "gang" so that we're not venturing into other territory, that we're not capturing, through unintended consequences, say other type of activity, but there is a definition that is utilized within the law, the bill, that borrows criminal street gang definition from Delaware, existing Delaware statute. Similar definitional language is used in Arizona, Florida, Georgia, and so we're not reinventing the wheel here. But, you know, to kind of reinforce the fact that initiation is such a key and important ingredient for these gangs, there's a number of different, and I don't know how familiar you are with, you know, gang practices, but there's gang practices. You've only to look on the net and they...you can be beat in or being jumped in or beat into a gang which means essentially having to fight a certain number of gang members for a given period of time and being able to take the licks, the beating, and fight back. You can be sexed in, which is used to initiate generally females into male-dominated gangs wherein the initiative provides sexual services for one or more of the established gang members. If you're jacked in that's committing a theft or larceny. You can run the gauntlet. An individual stands in the middle of the circle and must fight his way out or run between two lines of gang members. Sometimes you have to commit a drive-by shooting, Russian roulette, blood-in/blood-out, catching a flag. They've got a circled in, which is fighting through the center of a circle of gang members, courted in, deeded in, something called freeing Hoover, which is picking up six pennies which have been thrown on the ground, while being physically assaulted by several gang members. When all the pennies have been gathered, the beating stops. You can be punched in. So there's...it's a...what they're trying to do here is trying to create an initiation that does

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in fact endanger the person's physical health, mental health or safety of that person such that they know when they're...if they're willing to subject themselves to that then they're probably willing to...which is, you know, it's inane why you would subject yourself to that, but you have a little bit more reliability that these people are going to stay honest with the gang and do what they want you to do even if it doesn't make sense. And so that's a little bit about what the bill is about and be happy to answer any questions that you have. [LB508]

SENATOR ASHFORD: Senator Pirsch, let me ask you, I was just talking to LaMont because I know this is an issue that you've been talking to the Attorney General about and with us and so forth. Is...and I think the concern was proof issues. But is it...I mean it is theoretically possible, if we could clear those up, to make it part of LB62...or LB63. Would you have an objection to that if...? [LB508]

SENATOR PIRSCH: Uh-huh. No, I wouldn't and... [LB508]

SENATOR ASHFORD: Because LB63 will probably...well, it will be a priority bill and is that something you'd be amenable to or...? [LB508]

SENATOR PIRSCH: Oh, sure, I don't care what package is preserved. I guess the concept is what I'm concerned about. [LB508]

SENATOR ASHFORD: Right. And this is getting...this is the enticement issue primarily? [LB508]

SENATOR PIRSCH: Well, it essentially deals with initiation. [LB508]

SENATOR ASHFORD: Or initiation, yeah. [LB508]

SENATOR PIRSCH: Right. Yeah, the language is knowingly or you can't intentionally, knowingly or recklessly endanger the physical or mental health or safety of another person for the purpose of initiating them into, that's one, or essentially the same. There's kind of three elements or three different ways of violating it. If you're placing somebody's physical health or mental health in danger by initiating them into a criminal gang or if you are, in the second, if you're causing them to be subjected to sexual conduct, then that's another, for the purpose of initiation. And thirdly, if you're causing them to engage in a criminal act then you shall be guilty of... [LB508]

SENATOR ASHFORD: Okay. Well, I mean, yeah, it would be something potentially that could fit into the package, right? I mean... [LB508]

SENATOR PIRSCH: Uh-huh. Oh, yeah, I think that that would be. I, again, I don't...it's more the...it's nothing special about having a separate bill. It's just the concept that I'm

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interested in. [LB508]

SENATOR ASHFORD: No, no, I'm not...and I'm not suggesting to you that that's...I'm just asking if...because if it is, then we could, if that's amenable, we could work on that with Corey and see if we can get it to fit. So okay. [LB508]

SENATOR PIRSCH: Yeah. Very good. [LB508]

SENATOR ASHFORD: Yes, Senator Coash. [LB508]

SENATOR COASH: Thank you, Chairman. Senator Pirsch, just a quick question: This is designed to go after the initiators, right, obviously. Can a person who's subjected to these initiations be prosecuted under this? [LB508]

SENATOR PIRSCH: I mean, it's designed to go after the initiators because, of course, if, you know, what we find is with the gang, like I mentioned, if they're not out replicating themselves and diminishing then they...and you see that with some specific gangs, that they don't do a good job of recruitment and those gangs fall off the face of the earth. But the problem is, is that other gangs do do a good job of recruitment and those gangs then...so this isn't alone a cure for any of the recruitment but it is one tool. [LB508]

SENATOR COASH: Well, sure. I noticed again you put consent shall not be a defense and you mean consent of... [LB508]

SENATOR PIRSCH: Consent, right, in other words, but that doesn't...that's not in prosecutions of the person being beaten up who is the gang member. That means, look, I am...like in certain situations consent can be a defense. What I hope to clarify in that is if you're prosecuting me for violating the statute, having beaten somebody to a pulp to initiate him in the gang, the mere fact that this gentleman...that this person who I've beaten up knew that that was the way he had to get into the gang and said, okay, I'm willing to run the gauntlet, I know you're going to assault me, that's not a defense to the fact that he's being...his health is being threatened, so... [LB508]

SENATOR ASHFORD: Any questions, any further questions of Senator Pirsch? Thanks, Pete, very much. [LB508]

SENATOR PIRSCH: Yeah. [LB508]

SENATOR ASHFORD: Any proponents? Jack. [LB508]

JACK CHELOHA: Good afternoon. [LB508]

SENATOR ASHFORD: Have you been here yet this year? I guess you were here once.

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[LB508]

JACK CHELOHA: I've been to the committee but not today, though, so... [LB508]

SENATOR ASHFORD: Oh, okay. [LB508]

JACK CHELOHA: ...good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Jack Cheloha, J-a-c-k, last name is C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. I wanted to testify in support of LB508 and thank Senator Pirsch for introducing this matter. Earlier today you heard from our police chief, Eric Buske, in support of LB35 and LB63, and likewise the city as a whole is in support of those bills. And I wanted to be here for this bill to specifically make the record and say, as you know through your studies, that we do have a problem with gangs in our city and if we could help, you know, do whatever we can to, you know, stop the growth of membership or to hinder them in any way, we'd appreciate it. So for those reasons, we support the bill and thank you very much. [LB508]

SENATOR ASHFORD: Thanks, Jack. Any questions of Jack? We can really probe into that statement if (laughter)...thank you very much. [LB508]

JACK CHELOHA: Thank you. [LB508]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? Okay. [LB508]

SENATOR PIRSCH: I'll just waive. [LB508]

SENATOR ASHFORD: (See also Exhibit 13) Thanks, Senator Pirsch. Thank you. That closes the hearings for the day, except for one thing. (Exhibit 8) I have to admit that someone has written a letter in opposition to LB63 that we're submitting for the record from the... [LB508]

SENATOR ROBERT: Ernie Chambers? []

SENATOR ASHFORD: Oh, he has no... []

\_\_\_\_\_: The attorneys... []

SENATOR ASHFORD: Yeah, the defense attorneys are opposed, I guess. []

\_\_\_\_\_: ACLU also. []

SENATOR ASHFORD: ACLU is opposed. But I just...just for fairness sake. []

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SENATOR COASH: ACLU is opposed? []



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Disposition of Bills:

LB35 - Placed on General File with amendments.  
LB63 - Placed on General File with amendments.  
LB508 - Held in committee.

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Chairperson

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Committee Clerk