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Rough Draft

Judiciary Committee  
October 26, 2012

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[LR516]

The Committee on Judiciary met at 9:00 a.m. on Friday, October 26, 2012, in Room 120 of the Industrial Training Center at the Metropolitan Community College, South Omaha Campus, Omaha, Nebraska, for the purpose of conducting a public hearing on LR516. Senators present: Brad Ashford, Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; Scott Lautenbaugh; and Amanda McGill. Senators absent: Steve Lathrop, Vice Chairperson.

SENATOR ASHFORD: (Recorder malfunction)...has continued efforts on this issue which started with Garry Gernandt, City Councilman Gernandt, a few years ago and in the south Omaha community; and we appreciate Senator Nordquist bringing this to us, to the Judiciary Committee. The interim study was filed by Senator Nordquist to examine issues relating to the crime of destruction of property through the use of graffiti, and to develop recommendations to prevent, combat, and abate graffiti in communities. I would like...Senator McGill is a member of our committee, actually today she serves as Vice Chair, inasmuch as she is the vice vice-chair normally. And Senator Lathrop is getting his CLE credits at the bar association meeting, so he's unable to be here. But we appreciate Senator McGill from Lincoln coming. To my right is Oliver VanDervoort; Oliver is the committee clerk. And LaMont Rainey is our attorney, and we appreciate them coming from Lincoln as well. I have a list of testifiers, but certainly anyone who wishes to testify will do so, but I will go down the list. And after Senator Nordquist, I have Mike. Mike is here, Mike Getty from the city attorney's office. So Senator Nordquist. [LR516]

SENATOR NORDQUIST: Thank you, Chairman Ashford, members of the committee, for being here. We are here today because despite significant efforts at the local level and at the state level, graffiti remains a pervasive problem in our community and particularly in my community of south Omaha. I introduced, as you said Senator Ashford, LR516 to examine issues surrounding the crime of destruction of property

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through the use of graffiti, and to develop recommendations to prevent, combat, and abate graffiti in communities throughout the state. Today's hearing is an effort to examine the impact of actions this Legislature has already taken, as well as an opportunity to hear what barriers remain and what role the state can play in addressing them. Those of you that were on this committee four years ago will remember here at Metro we had a comprehensive hearing, and then...I should have started by thanking you, Senator Ashford, first of all for prioritizing this hearing and having this hearing and thanking our friends at Metro. For a second time now, both you and Metro have been a key part in this and prioritized this issue to have a hearing on it. But my predecessor John Synowiecki, in 2008, introduced a similar hearing. We heard from a long list of experts that day, and took that forward and developed legislation, LB278, that I introduced. And then ultimately that legislation was incorporated into LB63, which among other things sought to aid communities by increasing and broadening penalties for graffiti and establishing graffiti as a state crime. Under LB63, repeat offenders would face stronger penalties, and defendants found to be advancing the interests of gangs would also see enhanced penalties. The bill also gave judges more flexibility, as to gave them the ability to order restitution, order counseling, or to suspend a defendant's driver's license. LB63 created the crime of unauthorized application of graffiti and made the first offense a Class III misdemeanor, the second and subsequent offenses Class IV felonies. We know graffiti remains a real problem in south Omaha and Omaha as a whole and in other communities across our state. And it is more than just a minor eyesore. It lowers property values. It can often be related to gang activity and can threaten to chase businesses and jobs out of neighborhoods that need them. We know that if we allow this to continue to fester, it leads to a perception that neighborhoods are unsafe and significantly impacts community morale, not to mention the monetary impact to housing and business values. We heard four years ago at the hearing from experts really focused on the two types of graffiti, one being gang-related, which seeks to send a message to rival gangs, mark territory, and intimidate and instill fear in our community. Tagging, on the other hand, has less insidious intentions, but perpetrators are usually are usually after fame and recognition, but their crime still does damage property and

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threatens community morale. Regardless of the type of graffiti, experts told us that it can be a gateway crime and can lead kids and adults into more serious crimes. The city of Omaha and its community partners have made great strides and substantial investments in addressing this issue. We are going to hear from a number of testifiers after me who are leading the way on this issue in our community. Councilman Garry Gernandt, a former police officer, will speak about the efforts he's leading, a collaborative effort to do that. Mike Getty from the prosecutor's office who specializes in this will offer testimony. Crystal Rhoades from the Neighborhood Center is here. Weston Thomson from Kent Bellows Studio will discuss their efforts as a nonprofit and as a preventative measure. Oscar Duran from Deer Park Neighborhood Association will testify about the impacts in the community and the great efforts he's leading to engage youth in preventative measures. Kayleen Young from the city of Omaha who's the anti-graffiti coordinator. And Roger Garcia, who is a very concerned active community member will testify. And anyone else, as you said, is welcome to testify. But we know this is an issue. We've taken action at the state on a penalty side. We also put some other pieces in there, other deterrents for the courts to use. But, you know, we know that the problem still persists and that there are other avenues we can take to address this. So that's really what we're here to hear about today. [LR516]

SENATOR ASHFORD: Thanks, Jeremy. Any questions of Senator Nordquist? Seeing none... [LR516]

SENATOR NORDQUIST: Okay. Thank you. [LR516]

SENATOR ASHFORD: I assume you're going to stay. [LR516]

SENATOR NORDQUIST: Yeah, I'll be here. [LR516]

SENATOR ASHFORD: Garry, do you want to come up? Councilman Gernandt really has been the catalyst for much of this legislation on the state level, LB63, and the

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changes that Senator Nordquist talked about. So welcome. [LR516]

GARRY GERNANDT: Good morning, Mr. Chairman and members of the Judiciary Committee. My name is Garry Gernandt. I am vice president of the Omaha City Council, and I extend a warm welcome to southeast Omaha this morning which is the district that I represent. So that you have a snapshot of the district: 72nd Street on the west to the Missouri River on the east, Martha Street on the north to Harrison Street on the south. Unfortunately it is the epicenter for graffiti in our city. I can tell you I am not proud of that. But what I am proud is and of is the team that Omaha has assembled to battle this despicable nuisance. You'll receive written testimony of the history of Omaha's battle against graffiti. My testimony will spare you of that history lesson. I certainly can't speak for the state of Nebraska, but I would really find it hard to believe a city, a town, or a village that has graffiti under control. And that includes our capital city of Lincoln. Having no graffiti would even be harder to believe. And to spare you a long duration of that, I will just say it's coming to a theater near you. This despicable nuisance has a huge, huge impact on neighborhoods and business districts. Quality of life, new housing starts, small and large business development, all take a direct hit from these taggers and bangers. No doubt about it. We can't even measure the loss of new or prospective residences and business folks when graffiti is present, and these folks driving by don't even take the off-ramp; they see this. Nebraska needs to continue its efforts in curbing this type of destruction of property. LB63 was a great start. We've seen evidence of that here in Omaha, and you'll hear some testimony about that shortly. If I may, Omaha's approach is three-pronged: abatement, enforcement, and prevention. Omaha is doing a good job on the abatement side, and you'll hear a little bit about that, plus there's a rather lengthy dissertation about that in the written testimony. Could we do better? Yes. And part of that history that we've provided you will show how that is progressing. Our law enforcement folks are doing a great job as well with the limited amount of resources that they have. Could that be better? Yes. Our consultant's blueprint has laid a pathway for them as well on what can be done to curb graffiti. A few years ago, during the testimony of the graffiti bill LB63, I said our prevention efforts sucked. And I think you'll

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remember the can that I had sitting on the table. [LR516]

SENATOR ASHFORD: It was effective, Garry. I thought the can thing was... (Laughter)  
[LR516]

GARRY GERNANDT: You didn't know if I was...you were going to get sprayed or what, but it had a good effect I think. Does more need to be done? Absolutely. We have to keep our youth from falling prey to this type of behavior and conduct. You'll hear more on education and mentoring components from other speakers. I have publicly admitted that I cannot put graffiti and artist in the same sentence. But what I have learned is a whole lot about urban art, and you'll hear more about that later from folks that are directly involved with that. In my quest both as a legislator here in Omaha and in my previous life as an Omaha police sergeant have come to believe that a sizeable percentage of our youth are saveable. And I would even go as far as saying I think 90 percent are savable through educational programs, mentorship programs, and something that is going to be talked in a little greater detail is called our first-time offender penalty package. Our anti-graffiti coordinator, Kayleen Young, will describe that package, and I think this is also one way that the state of Nebraska can be involved, in my humble opinion. In closing, I have been authorized by the graffiti consultants from San Jose, California, that Omaha brought in a couple of years ago and started this whole blueprint process on our battle and gave us guidelines, I have been authorized to offer the state of Nebraska two one-day workshops where we could possibly divide the state in half, one day in each half on how to curb graffiti in their communities, for free. No charge to the state of Nebraska. I would urge this committee to pursue this offer and other recommendations that are going to be put before you this morning to show the nation that Nebraska will not tolerate this type of destructive behavior. Thank you.  
[LR516]

SENATOR ASHFORD: Garry, let me just add to your point. I think that when we first started this effort--you started this effort with us on the state level six or seven years ago

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now, and I can't remember exactly the time, but...and I know we will hear more about it today, but it has been...first of all, the awareness is heightened from a very small percentage to a very high percentage through your leadership; and I think that's extremely commendable. We will take up your offer on the committee and we will have...the committee can reach out to the legislators in January and we can bring the consultant in and have a seminar on that issue if that's what you think would be helpful. So I think that that's great. I did, just very quickly, I did have an occasion, on a couple of occasions to go to South High School and meet with Cara Riggs, and she did show me the program that the other side of graffiti, the art side of graffiti which you've alluded to, and it is an amazing...and that I think had started since your efforts began. [LR516]

GARRY GERNANDT: There are talented kids out there, Mr. Chairman. [LR516]

SENATOR ASHFORD: They really are. And, I mean, I was really blown away by how you can turn what is for the most part can be a destructive behavior into something very positive and artistic. So I commend you for that. Welcome, Senator Council. [LR516]

SENATOR COUNCIL: Senator Ashford, how are you? [LR516]

SENATOR ASHFORD: Senator Council is here. Does anyone have any questions? Yes, Senator McGill. [LR516]

SENATOR MCGILL: I do. I guess maybe these are logistical or just curiosity, but you...is there much graffiti in other parts of town or is it really truly a south Omaha problem? [LR516]

GARRY GERNANDT: Our survey showed that all four quadrants of the city of Omaha have graffiti in them. The last survey, just as a quick example, which was quite a surprise to my colleague Mr. Mulligan out in northwest Omaha in Elkhorn, when the survey was done, there were 423 tags that were noticed within his legislative district, his

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council district. And my other colleagues were surprised when they got the numbers in regards to their particular districts. The eastern part of Omaha is a troubled zone, but unfortunately my district is the epicenter of it. [LR516]

SENATOR MCGILL: Generally what time of day is it happening? Middle of the night? In the afternoon? Evenings? Do you guys have any idea? [LR516]

GARRY GERNANDT: 24/7. [LR516]

SENATOR MCGILL: Okay. [LR516]

GARRY GERNANDT: Yes. I caught a young man tagging a bridge abutment at 3:30 in the afternoon. [LR516]

SENATOR MCGILL: Oh, really? [LR516]

GARRY GERNANDT: Yeah. Called the police, he was apprehended within ten minutes after it was tagged. Some of our taggers are gangbangers or they pick...some like to work under the cover of darkness. But we have seen all, all types of...and they don't discriminate against time. They don't discriminate against days. They go out whenever they think that they get the urge and they do their thing. But I will say that, Mr. Chairman, you are correct. We have got some talented people out there, and they just need the right guidance and the right mentorship. And if...I appreciate the kind words, sir, but there's no "I" in team. We have assembled a great team, we have a great collaborative, and we will win. [LR516]

SENATOR ASHFORD: Thanks, Garry, and thanks for your leadership on the issue. Michael, the city prosecutor's office; long years of experience on matters. (Laughter) [LR516]

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MICHAEL GETTY: (Exhibit 1) That sort of hurts, but. Okay, my name is Michael Getty. I'm one of the assistant city prosecutors. I'm the oldest city prosecutors as well, so I guess... [LR516]

SENATOR ASHFORD: We established that you're...we actually in our last conversation we established that you're actually older than me, which I never thought was...(laughter). It's not a lot older, but it's slightly older. [LR516]

MICHAEL GETTY: Well, if it makes you feel any better, Senator Council was a law school classmate of mine, so. [LR516]

SENATOR COUNCIL: Yes, so there. Right. [LR516]

MICHAEL GETTY: I go back that far. [LR516]

SENATOR ASHFORD: Ah, there you go. That does help a little bit, Mike. [LR516]

MICHAEL GETTY: All right. I prepared some documentation there for you, and that's kind of based on the theory that you want to know where we're at. And where we're at, I got a request or I talked to Senator Mello a year ago on the South Omaha Environmental Task Force and he asked me to kind of update. And I addressed this study being considered at that time with some detailed documentation, some of which I've re-reproduced here and some of which is I'm hoping is in Senator Mello's custody because I think they're on another computer. But basically I want to caution you to some extent, and you're aware of this of course being in the world of politics, I'm going to quote a Michael Tesar who used to be in our office, retired about two-and-a-half years ago. There's three difficulties with the truth, and those are liars, damn liars, and statistics. And I've offered you statistics today and some explanation of those statistics which may make a difference. Secondly, and I think I said this at the first hearing when Mr. Conboy pointed to me five years, six years ago and said I want you to do graffiti

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stuff, I got on the Internet immediately and started doing some research. And when you Google the word graffiti, the first thing I got was a mail order store in Montreal that sold, I don't know how many pages, of paints, nozzles, special nozzles. I don't know if you're aware of that yet, and you have a special nozzle to do some of that really nice fade stuff on the edge of the letters. That was the first thing I saw, which of course means that's the thing that gets hit the most when you do the search. Another thing I think you all would be fascinated to look at is on YouTube there's a short video called "Graffiti Train" where--I think it's up in Canada--again one of the tagging crew is assigned to pull the emergency switch to stop the subway, and then nine others run out and paint the entire side of this four-car train in less than a minute and a half. It's covered in paint. So there are some skills out there, no question about that. The statistics I provided to you are from three sources. Well, actually there's four sources. There's a summary I did for our office about three years ago which is one page. And then if you go...this page here lists from...it went from September of 2009. I believe that's when the law took effect and the felonies. Is that not correct, Senator? [LR516]

SENATOR ASHFORD: That was a LB63 was. [LR516]

MICHAEL GETTY: Yeah, LB63. [LR516]

SENATOR ASHFORD: And we had done some things prior to that, but LB63 was the felony, yeah. [LR516]

MICHAEL GETTY: Well, that's the big change. [LR516]

SENATOR ASHFORD: That...yeah. [LR516]

MICHAEL GETTY: So what I did, I went through our four different statistical screens. I took out...this middle gap here is from my work. That tells you what the initials of the graffiti artist were and the charge we said. Part of that is because I'm concerned about

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tracking on who that graffiti artist may be in terms of the ceiling that has occurred on some of these cases already. The left column is the date of birth. The next column is supposedly the date of the complaint. That could be wrong. Other information. I think the most important information are in what we did here, the commentary, what the sentence was. [LR516]

SENATOR ASHFORD: What page are you on, Michael? I'm sorry. [LR516]

MICHAEL GETTY: I'm on...well, I didn't number them. [LR516]

SENATOR COUNCIL: It's about the middle of it. [LR516]

SENATOR ASHFORD: Oh, okay. Okay. [LR516]

MICHAEL GETTY: You're about halfway through there I think. You're toward the back, and it's sideways. [LR516]

SENATOR ASHFORD: Oh, I gotcha. All right. [LR516]

MICHAEL GETTY: There we are. So for instance...and you were asking me about locations. The second entry there, the location of the street signs and poles tagged by this young man were in Stony Brook. Okay. The fifth story down there is a fellow who...he's also narrated in another story. Hugo did a lot of things before we finally got our hands on him, and there's some fun things to talk about there, but. We've got railcars. There's I think out of these three pages I have there are eight or nine gang graffiti-type taggings. The rest of these are either attempts at, you know, the balloon art tagging stuff or else there's one here where they caught two 15-year-old girls putting all kind of obscene things on the back of the benches at a park, I think the Leavenworth Park at 34th and Leavenworth. So there's a real mix here. The big graffiti that we all see and panic about it, that takes up a lot of space, is probably maybe 70 percent of this. I

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also added on there, the last page is the adult felony charges that were considered by the county attorney. These may not be accurate. I got these off the case management system. Mr. Kleine may have more detailed information on this. But in this, there were two issues, kind of a dichotomy in the questions I got from the two senators I talked to. One was, what's the effect of punishing these children by giving them felonies? And the other was, gosh, what's the effect on these children for giving them these felonies? If you catch my tone there. It was a concern about the effect of this. Well, this gives you a pretty good idea, at least on these eight that I put down. Four or five...two were declined to be prosecuted because the prior graffiti was a city ordinance graffiti, and that would have...we cannot match that up with enhancement. Four...I think four or five were filed and then given diversion. [LR516]

SENATOR ASHFORD: Michael, can I ask you a question on that? [LR516]

MICHAEL GETTY: Sure. [LR516]

SENATOR ASHFORD: And I think that is an extremely important question that you've raised. And I don't want to...I tend not to do this, but that's a state statutory change, isn't it? I mean, we could in fact utilize ordinance violations as an enhancement by state statute. [LR516]

MICHAEL GETTY: Back on day one, the first six months this was in effect we didn't; and that's probably maybe two cases. [LR516]

SENATOR ASHFORD: Okay. [LR516]

MICHAEL GETTY: And you can see...well, you can't really see it here, but the ones that were declined we went ahead and prosecuted as city ordinances and got our hooks in these kids, so. [LR516]

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SENATOR ASHFORD: Okay. All right. [LR516]

MICHAEL GETTY: But...and then there's two that were actually sentenced. One ended up pleading to a felony criminal mischief because that was uglier than the graffiti; and the other one, the district judge sort of shrugged at the county attorney's arguments about how serious this was and fined the gentleman \$200, and obviously he had some prior. And then I got documentation from the juvenile division of the county attorney's office. There's four pages there. Do not be overwhelmed by the number of pages because--and I'll explain this again here--the fourth column over is the arrest or citation number. As you go through these--and I tried to get some time to do this, I didn't get a chance--as you go through these, you will see...let's see, if you go down to the sixth entry here, transfer to juvenile court, and you've got the same arrest number for two entries...three entries; so these are actual charges as opposed to individuals. So to get an accurate count you have to do it a little differently. But it looks to me as though about half the cases in Douglas County are being prosecuted or began prosecution as adults, and about half are beginning prosecution in the juvenile system. [LR516]

SENATOR ASHFORD: Did you match these up with the other misdemeanor... [LR516]

MICHAEL GETTY: The ones that we have? [LR516]

SENATOR ASHFORD: That's different obviously because it's prosecuting in a different office, right? I mean... [LR516]

MICHAEL GETTY: It is a different office, but you can note that if we go five down it says, transfer from county court. [LR516]

SENATOR ASHFORD: Okay. [LR516]

MICHAEL GETTY: So those are ones we touched first. [LR516]

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SENATOR ASHFORD: Okay. [LR516]

MICHAEL GETTY: Some of those we fought about, some of those we deferred to the application to send to juvenile court, and some of those we sent directly as part of our informal agreement we established about six months ago to send the cases that deserve that clearly when they're 17 to go there. [LR516]

SENATOR ASHFORD: All right. Thank you. Any questions of Mike? Would you explain that for the record, because I think Marty and you and others have done a great job in deferring cases that you believe to be appropriate to directly to juvenile court. Would you explain what that protocol is? [LR516]

MICHAEL GETTY: Well I don't know if it's so much a protocol as an examination by one of our experienced prosecutors of the record and the actual crime. You know, if it's somebody who has no priors, who's 17 and a half, who is caught on the back of one stop sign writing his name is going to be treated differently than somebody doing Surenos 13 along an entire street. [LR516]

SENATOR ASHFORD: Okay. So it's offense-driven then? [LR516]

MICHAEL GETTY: Absolutely. Yeah, I mean, and that's one of the difficulties that I think we're not going to have when we do a first offender scenario on this unified treatment. I think if it's clearly a first offender scenario, then I think that's going to be all right. The problem in one of the other notes in here with the graffiti procedural summary I put in here, it's like any other crime. There's about...sometimes there's up to four levels of contact some youth will have with the system before we see them in front of a judge in a real courtroom that can put them in "big person jail". So in terms of worrying teenagers, I mean, I think when you talk about the effect of having made this a felony, I think what you have to do is talk to 15- and 18-year-olds. [LR516]

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SENATOR ASHFORD: Yeah. I guess making it a felony is a...I mean, to me it's a recognition of the difficulties and what of this kind of crime and the impact on the community. But the real activity is at the misdemeanor level. But to Councilman Gernandt's point, the intervention, the third prong of this, it's important that that first offender piece is--as you're already doing--is segregated out and treated in some...and we're going to hear more about that I guess, so. [LR516]

MICHAEL GETTY: Right. I also wanted to do two other things here if I can step away here for a second. And this is a little off track but hopefully only a little. I mentioned I think at the beginning that I wanted to congratulate--and I think Councilman Gernandt agrees--the Omaha Police Department for their efforts. The graffiti expert suggested that we put two full-time officers on that from the gang unit. Well, the gang unit has some other things going on that kind of minimizes that allocation. But I just wanted to show you what happens when they do have the time. This is one defendant. This is the work-up they did on one defendant. These tags are the nine report numbers that they had different places. And I wanted to discuss the fact that the city does spend some money on a thing called Graffiti Tracker. And it's an amazing piece of equipment and it's actually headquartered here. And why it's important for the community to allow us to get pictures of these graffiti, because this gentleman here---Hugo is the other guy I could talk about. His moniker was "Exist." That's what he put on everything he put on it. And they worked up a scenario where they had all these pictures of his graffiti, and he was in a situation where he was caught, and it's juvenile court, and then he was in some other trouble. Went to a meeting where Mr. Winchester from our office was giving a big speech about how stupid children are. Mr. Winchester has a different approach to things, kind of a shock at the front end, and then here's what you can do. Wrote him a letter saying thanks so much. I'm so glad that you came to the meeting. I understand what I've been doing is off the wall, and you think: great community contact stuff. Then we arrest him four months later for graffiti. And while that case is pending, NETV has a program. And if you go to NETV, again I'm sending you to the Internet to help do your

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own research here, but there was a segment on Nebraska Stories called "Wicked Paint." And while this last case was pending, he was interviewed, you know, painting stuff. At that point it was legitimate, but at that point he was painting exactly what he'd painted before, which locked our case in pretty well. And I haven't heard from him in about two years or heard about him. So I think those are probably good things. Boy, I've got so much more to talk about, but I'll just stop talking. [LR516]

SENATOR ASHFORD: Yes, Senator Council. [LR516]

SENATOR COUNCIL: I just have a process question, Mr. Getty. There's a 16-year-old, and police get a report of someone in the act of spray painting city property. The police arrive. They're 16 years old. What's the process? Are they issued a citation or are they taken into custody? [LR516]

MICHAEL GETTY: If they're 16 and they don't have any active warrants and it's not a felony, they will be cited. [LR516]

SENATOR COUNCIL: Okay. So once they get the citation though, then they're going into adult court unless they have an attorney who tries to get them... [LR516]

MICHAEL GETTY: Well, no actually... [LR516]

SENATOR COUNCIL: And even on misdemeanors you can't... [LR516]

MICHAEL GETTY: Well, the last, I'd say it's been about a year or a year and half, we have a working agreement with the juvenile county attorney's office that we have somebody basically that reviews all of our misdemeanor cases--one of our attorneys is assigned to do this--and reviews that to see whether that person deserves either a diversion from our office or deserves to be sent to the juvenile division for further processing. [LR516]

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SENATOR COUNCIL: Okay. Okay, because I was trying to see how that the...and when you're talking about the enhancements and if the youngster is prosecuted, for lack of a better term, in juvenile court, that doesn't count towards the enhancement, correct?  
[LR516]

MICHAEL GETTY: No. No. In fact on...if you go to the middle of this package I sent, there's also kind of a summary that...when the graffiti expert, he sent out these narratives or these questions: What can we do? What do you do over there? How do you do it? And this basically talks about the multiple steps we get to before we get to a felony. You know, if they're...and if you look at the juvenile flyer here, there's a boatload of 13- and 14-year-olds that the officers catch doing this stuff. And how do we make them realize it's serious is a big issue, because by the time they're 15 their brains are wired. So, yeah. [LR516]

SENATOR COUNCIL: Okay. Thank you. [LR516]

SENATOR ASHFORD: Yeah. And just so I clearly understand because I think this is a...and you've done...your office has done great work in this deferral and diversion, no question. What I'm a little confused on, I think the ordinance...if the ordinance...and certainly the juvenile court can prosecute an ordinance violation. Is that correct?  
[LR516]

MICHAEL GETTY: Oh, sure. [LR516]

SENATOR ASHFORD: So if the...is there...is it...do you see an issue in the difference in penalty between a particular ordinance violation and state statute? In LB63, we went from a misdemeanor III to a felony in one jump. [LR516]

MICHAEL GETTY: Right. [LR516]

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SENATOR ASHFORD: The ordinances may have different--and do I assume--have different penalties for somewhat the same activity. [LR516]

MICHAEL GETTY: Well, what we did immediately after LB63 took effect, we filed our first offenses as state statutes. [LR516]

SENATOR ASHFORD: Okay. [LR516]

MICHAEL GETTY: And that works for the enhancement, and it usually doesn't work too badly for us because usually there's...almost always there's more than one charge. [LR516]

SENATOR ASHFORD: Okay. [LR516]

MICHAEL GETTY: But the city ordinance has a six-month penalty and the state statute is 90 days. And... [LR516]

SENATOR ASHFORD: Yeah. Unless it's charged as a felony of course. [LR516]

MICHAEL GETTY: Right. I mean, in the first offense sense, yeah, we still have a whole bunch of tools. And I attached the municipal ordinances that we use to back that up: possession of graffiti by a minor; possession of graffiti; sale of graffiti materials. Some of this stuff, we had one here, about one of the first ones I did six years ago, this kid is...this guy has got a couple of priors under the city ordinance. And Judge White is on the bench; and Judge White said, why are you doing this? He had a 14-year-old with him. And he said, "Well, Judge, I was teaching the homie." You know, he was the educator for the community...how we get around that. [LR516]

SENATOR ASHFORD: Well, I mean, it sounds to me--and then I'll let you go--but it

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sounds to me like you are covering all three bases. You're covering enforcement with the police activity. You're covering intervention with these different...the first offender thing, and also the education, the schools, and all the things that are done as well. And then, you know, clearly on the penalty side you are trying to...you are getting consistency now. [LR516]

MICHAEL GETTY: Well, we're trying to get consistency. As you know from being down at the courthouse, we have 27 judges, so. [LR516]

SENATOR ASHFORD: Well, I mean in your activities. [LR516]

MICHAEL GETTY: Oh, and what we try to do. Yeah, yeah. [LR516]

SENATOR ASHFORD: Yeah. Okay. Thanks. [LR516]

MICHAEL GETTY: One more comment quick. I want to thank Councilman Gernandt for engineering the number of graffiti vans we have because one of the big prevention assessment things is getting those things covered right away. So that's an awesome accomplishment. That has made I'm sure a substantial difference. [LR516]

SENATOR ASHFORD: Yeah. Thanks, Michael. [LR516]

MICHAEL GETTY: Sure. [LR516]

SENATOR ASHFORD: Crystal, welcome back to the committee. [LR516]

CRYSTAL RHOADES: This committee doesn't have any rules about electronic devices, does it? [LR516]

SENATOR ASHFORD: We encourage electrical things. [LR516]

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CRYSTAL RHOADES: Okay. Okay. I got in trouble in Senator Adams' committee.

[LR516]

SENATOR ASHFORD: Well, we don't...we agree on some things, but we differ on that issue. [LR516]

CRYSTAL RHOADES: My name is Crystal Rhoades, and I am the assistant executive director at the Neighborhood Center here in Omaha. I'm also very active in the South Omaha Neighborhood Alliance where I hold the leadership role, and I represent south Omaha on the Metropolitan Community College Board of Governors. So I have a lot of perspective about what's happening in terms of this particular area of town. And graffiti really continues to be a neighborhood problem. And we've made some pretty significant advances in tracking abatement. There have been the increased prosecution and the enhancement in penalties for graffiti vandalism; but from my perspective there really continues to be a shortfall on the preventative side. The Neighborhood Center, in conjunction with several of the neighborhood associations and alliances, has had some success with some preventative strategies, including security cameras and signage, murals, landscape design, lighting improvements, increased citizen patrols, and rapid abatement. All of these activities are reducing graffiti and vandalism of residences and businesses in the area. Data that we've collected from 2009 to 2011 related to security cameras and surveillance signage, whether those are decoy, so they're just dummy cameras, or live closed-circuit recordings, are showing dramatic reductions in graffiti at those locations. The Neighborhood Center has distributed both decoy and live security cameras with signage to over 100 different locations through the use of grant funding. And the graffiti has stopped in all but three of those locations. We did a 90-day check, a six-month check, and then a one-year check. In two of the locations, cameras were destroyed, and in a third location there was an area that had a blind spot not covered by the cameras, and by adding additional cameras to that location, we eliminated further graffiti and vandalism to that property. Adding the cameras and signage are effective

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preventative measures in combating the graffiti in our community primarily because this is being done by adolescents who are easily deterred. It's also a very affordable way and cost-effective alternative to repeated abatements. One of the things that we are challenged by is what I call the liability paranoia paralysis which we see a lot in neighborhoods. It stems from a remote, often completely unsubstantiated fear of being sued by some unknown victim in a frivolous lawsuit. People are frightened that if they put up security cameras or decoys that it will give a false sense of security or that people will believe that placement of the cameras is some sort of evidence of a known dangerous threat, and that in the event that something does happen at one of those locations that the owner will somehow be liable. We haven't found any credible case law that supports this, but it continues to be a persistent problem in terms of perception; and additional education surrounding the topic is necessary to overcome the resistance to what's otherwise a very successful deterrent to property crimes. The Neighborhood Center has also worked with the Kent Bellows Studio and the city of Omaha on a successful mural project. It turns out they're very good at art and I'm very good at cutting through red tape, and so it's been a very fruitful project. [LR516]

SENATOR ASHFORD: You are a red tape cutter. [LR516]

CRYSTAL RHOADES: Yeah, you know. And so in addition to the murals themselves reducing graffiti, the youth art mentoring component also acts as a deterrent to graffiti by getting adolescents to be supervised by caring adults. And it really does give them a positive outlet for their creativity. Not wanting to steal Mr. Thomson's thunder who can speak to the direct impact of individuals, I will say that graffiti along that trail where the murals have been implemented is down dramatically and we hope to continue to add additional murals in the years to come. Landscape design and lighting are also effective deterrents. The Neighborhood Center has added some educational programming for neighbors who are interested in using these techniques to assure that they are not easy targets for graffiti vandals. Additional education is needed and it would be particularly helpful to have these concepts discussed in relation to public space. Public works and

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the parks department spend a significant amount of time and money abating graffiti, but little thought is given to preventative landscaping and lighting when those parks and spaces are built or renovated. And so if we could change that, I think that it would really go a long way to help prevent some of these problems to begin with. The Neighborhood Center has also been working with the city of Omaha and the Omaha public libraries, and we've begun a pilot project for distribution of graffiti kits. Beginning next spring, the graffiti kits will be available at 12 public libraries, making it easier for volunteers and residents to obtain the supplies they needed to clean the graffiti up in their neighborhood in a rapid way. One of the things that is most effective in terms of preventing graffiti from reoccurring is to get it down as quickly as possible. While the efforts to combat the graffiti certainly have helped to reduce the volume, there continues to really be a need for preventative education and efforts. Additional programming is needed for children ages 12 to 16. What we know is that those hours between 3 p.m. and 6 p.m. are very high-risk hours for that particular population. They're too old for traditional childcare. They're too young to have after-school jobs. And so you have a lot of unsupervised adolescents doing a lot of risky and undesirable things, graffiti being one of those things. The graffiti tells us that this age is where children are most vulnerable to being recruited by gangs and other forms of hooliganism. These are children that are likely to be unsupervised by adults for a portion of their day. And while Omaha has both gang graffiti and regular tagging, both are likely to be at the hands of people in their teens or early twenties who, if they were more meaningfully supervised and engaged, would be less likely to engage in any high risk or criminal behavior at all. One of the things that I know, kind of wearing one of my other hats from the community college, is looking at the dropout rates and education for K-12 and what success looks like there and how that spills over into my world. One of the things that I think is to me very obvious and the data clearly supports is that we really need to look at rearranging kids' schedules. The way that the major school districts are currently structured is that young children in elementary school start at 9:00 and they go until 3:30-ish or 4:00, and then there's after-school care until 5:00 or so. And the adolescents start at, you know, 7:30 in the morning and they're out at 2:30, and then they're kind of left in the wild until

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their parents come home from work. I know that this is going to sound like a very radical idea, but it may end up being a very simple solution. In places in school districts where they've flipped that and made it the other way around, what they found is that teenagers often will not get out of bed early to go tag or engage in smoking or drinking or graffiti or, you know, the types of behaviors we don't want them to be engaged in. And so looking at how we can more holistically treat the problem of juvenile delinquents and just unsupervised children, which often leads to juvenile delinquents and a number of problems with peer pressure-associated behaviors, we really need to be looking at a much more comprehensive approach. I think that particularly with graffiti and crimes, who you hear from the most are the victims, and there's a really natural inclination to gravitate towards enforcement and penalties and abatement and remediation. But that old adage about, you know, an ounce of prevention and a pound of cure couldn't be more true. And while I...I have a teenage son. They have a real proclivity towards stupidity and he can't help it. And he's a good kid who is, you know, reasonably frightened that he'll be grounded for the rest of his life should he decide to engage in anything foolish. But, you know, even for good kids these sorts of behaviors...they need adults in their lives. And unfortunately that's becoming more and more of a challenge. And so I would encourage the committee as you're evaluating this issue to be mindful of that because I think that it's a really critical component in how we address it and improve it going forward. Thank you. [LR516]

SENATOR ASHFORD: And, Crystal, you're absolutely right. In fact, LB63 has a intervention-prevention component in it with the Office of Violence Prevention which was created out of LB63 which is part of the process. But any questions of...? Senator Council. [LR516]

SENATOR COUNCIL: Yes, and thank you, Crystal. In terms of the middle schools that are located in your area, the South Omaha Neighborhood Alliance, what kind of after-school programming do they have, if any, in the middle school itself? [LR516]

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CRYSTAL RHOADES: It's sort of hit-and-miss. There is some programming, and I think that it goes until about 4:30 or 5:00. It's a fee service, so of course parents who are unable to afford that service are going to have some challenges. Transportation continues to be an obstacle for many of those middle school families. Once the buses are gone, there may or may not be a way for those students to get home. And of course capacity is always limited. Oftentimes the programs are not large enough to fully support the need, and so that continues to be a challenge. But I do believe that both Norris and Marrs Middle School have some after-school programming, although it's probably not sufficient to encompass the entire population. [LR516]

SENATOR COUNCIL: And in terms of city recreational facilities, city rec centers, are there... [LR516]

CRYSTAL RHOADES: There a few, but the programming tends...isn't necessarily geared towards that particular population. And even some of the programming at the library, it's very...it's difficult to program for that age group. And so because it's challenging to have programming that they'll actually be interested in participating, oftentimes you don't...you just see an absence of it. [LR516]

SENATOR COUNCIL: Thank you. [LR516]

SENATOR ASHFORD: Thank you, Senator Council. [LR516]

CRYSTAL RHOADES: Thank you. [LR516]

SENATOR ASHFORD: Thanks, and thanks for shepherding our community college... [LR516]

CRYSTAL RHOADES: You are most welcome. [LR516]

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SENATOR ASHFORD: ...financing bill through. You did a great job on that, Crystal.  
[LR516]

CRYSTAL RHOADES: Thank you. I appreciate that. [LR516]

SENATOR ASHFORD: The next person on my list...well, is Weston. Weston Thomson.  
[LR516]

WESTON THOMSON: Good morning. My name is Weston Thomson. I'm the education manager for the Kent Bellows Studio and Center for Visual Arts. This is my first testimony ever, so I'm a little nervous so please bear with me. [LR516]

SENATOR ASHFORD: Well, we won't allow you to be nervous here very long. [LR516]

WESTON THOMSON: Okay. Sounds great. So I want to talk a little bit about context, terminology, and a brief history of graffiti, and discuss the work of the Kent Bellows Studio urban arts program. I'd like to start by reading a quote from a Chicago-based youth organization called the University of Hip-Hop. We had a visiting artist named Lavie Raven come from that organization to work with our youth. This organization, the University of Hip-Hop, engages youth development of multimedia resources for the purposes of community service learning and public arts education through hip-hop. Just for a clarification, hip-hop is emceeing, DJ-ing, b-boying, and graffiti. Those are the four tenets of hip-hop culture. So I quote here: Many youth are turning away from legitimized forms of education as they feel alienated and disenfranchised by schooling institutions. The racism, class and gender bias, and cultural ignorance in curriculum has frustrated inner-city youth today. Among the standardized tests, human mistreatment, and disrespect witnessed in students' experience in schools and society in general, it is little surprise that youth pursue hip-hop, modern dance, skateboarding, rave culture, and other arts to release their creativity. These pursuits must be nurtured and encouraged for the sake of the children's imaginative spirit, self-determination, and success in later

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life. So just to reiterate, graffiti is part of a cultural movement of hip-hop. Graffiti is not a term coined by the hip-hop movement, rather it was a label applied by the government to the visual work done with spray paint on unauthorized surfaces, both public and private. Graffiti is defined as writing or drawing scribbled, scratched, or sprayed illicitly on a wall or other surface in public space. I just kind of wanted to get those out; it's nice to have a refreshment sometimes. So the Kent Bellows Studio urban arts program is a program that we created in response to our young people's interest in graffiti, tagging, and street art. As part of the enrollment process at the Kent Bellows Studio, we interview students, we look at their sketchbooks, we look at stuff that they've done that they consider creative. Nine out of ten of them have some kind of a moniker or graffiti-inspired piece of work in their sketchbooks. As I started to notice this more and more, I felt like it was necessary to create a program where they could have an outlet that was a positive safe one for this type of art. So the urban arts program was created in response to young people's interest in graffiti. This program is structured as collaborative public art project engaging three to five youth interested in urban art with a professional artist mentor to create a public mural. We provide a practice space, spray paint, camaraderie with like-minded youth in a positive atmosphere. Area murals are conceptualized by incorporating the youth voice into conversations with the neighborhood center, organization, or community providing the wall or location. This is just one step of many that young artists take as part of the process for gaining permission or what we like to call the permission wall process; and that we partner with the city of Omaha to help guide the youth in the responsibilities of public art in general. So part of what we do that's really important is teaching them how to gain permission and what it's like to collaborate with community, research community, and create artwork that's reflective of the community. The program has become a hallmark example of prevention strategy focusing on positive and productive ways for youth interested in urban art to practice their art form. The community murals created by the young artists of the urban arts program challenge the stigma of spray painted content as vandalism. Ironically, legally and safely developing the aerosol techniques often learned through illegal graffiti vandalism can lead to both stunning and meaningful large-scale

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public artwork and a great sense of accomplishment and community involvement from the young artists. These murals also engage community and dialogue about the urban arts as a valid and powerful form of expression and can lead to more development of programs for young people who experiment with aerosol legally. Just a couple of things about what I've learned from the youth that we work with about graffiti. It's very popular. It's a very popular form of expression for many young people. Famous graffiti writers are idolized by youth for the risk-taking, rebelliousness, style, activism, fame, recognition, originality, and financial success. There are hundreds of videos on-line--like we heard about earlier--documenting graffiti in action, and they get very excited about it. Many youth have misunderstandings about appropriate use of public and private space, but they do in fact associate and connect with graffiti as part of their lifestyle and culture. Also, self-branding is a huge contemporary movement for young people, and advertising your brand or moniker on the street is very common. Some of the problems I see with making graffiti charges like...to make a felony charge for graffiti, this is why it's a little hard on the students and the youth. Graffiti is endorsed by youth-targeting companies, so it's profitable to get youth to like graffiti. It's used by snowboarding companies' magazines. They make money off of connecting youth and graffiti. Graffiti is endorsed by art galleries, art historians, as relevant and significant. It's celebrated on the Internet and the youth magazines. Graffiti is a tourist attraction in some U.S. and international cities. Graffiti is popular and liked by many people as is. Some people like it on walls. Graffiti is part of the hip-hop cultural movement. Graffiti will always be a part of every city, and there is no legal, safe place for youth to go who pursue graffiti. Quickly, a couple of solutions and ideas that we've been thinking about. I like to look at the skateboarding phenomenon when I think about graffiti. In the beginning, youth were getting ticketed regularly for skateboarding in public and private areas. Skateboarding was competitive, expressive, rebellious, fun, dangerous, and it was gaining popularity and it was destroying property much like the graffiti movement is. The cities responded by creating skate parks so that there was a place for youth to go skate. I believe a location for legal spray paint would be popular if planned correctly, and we've heard that from youth and retired graffiti writers alike. Like a legal place to go would be great. An

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urban artist registry within the city where youth can register as artists and apply for beautification projects would be awesome. More funding for urban arts programs like the Kent Bellows Studio programs that focus on developing the talents of youth people with spray paint and more murals. We all know that well-painted murals can increase the longevity and structural integrity of otherwise heavily vandalized walls, and the resulting murals can be both stunning and foster a sense of pride in a neighborhood center, nonprofit organization, or community base. The barriers we have for programming are: funding, mural locations, practice space for programs, general permission, and the stigma that we battle with anything made with spray paint. That's really what I had to say. I'm sorry I read most of that without a lot of eye contact, but... [LR516]

SENATOR ASHFORD: Well, let me...you did a great job. And what's...this is such a positive discussion, and I think it...I agree with you that the form of art that you're describing is popular, and I'm sure we can find more and more options for these young people. I think that what's key here is where government can make a difference. And when the councilman...and I'm sorry to keep bringing you up, but you did bring...you were the guy that got it started, I know you have a team, but. But anyway, when we got this started, there was a huge enforcement problem, and these...and there still is to an extent, and these...what we're criminalizing is activity that is not permitted; there's no permission given. The idea of a registry makes a lot of sense. The idea, you know, the Legislature, when we had the skate park issue, Steve Lathrop, in fact, the Vice Chair of this committee led the effort to address the liability issues for skate parks so that those skate parks could be developed in the city safely. I think we can...this is a great partnership that you have initiated on the arts side and that the councilman has initiated on the enforcement side. This is a great dialogue. This is how we should solve problems and I know you guys are doing it. I commend what you're doing. And this discussion really started on the enforcement side, but we're now moving into the productive side and I think that's great, so thank you. Any other questions? Senator Council. [LR516]

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SENATOR COUNCIL: Thank you. And thank you, Mr. Thomson. You talked about reading. That was a very informative piece you shared with us. And one of the questions it brings to mind, and you're talking about the urban art movement, and I was just wondering from your research or your involvement whether you see any correlation between the amount of graffiti and reductions in, you referred to it as legitimized forms of art education. Is there any correlation that it increased when urban schools, in efforts to cut funds or restructure their curriculum, eliminated a lot of arts education? [LR516]

WESTON THOMSON: So let me...I think I understand the question. So you're asking if when students have started cutting out some of the arts and some of that, does that give rise to more graffiti in areas? [LR516]

SENATOR COUNCIL: Yes. [LR516]

WESTON THOMSON: I don't have any statistics in that. But I think people like Lavie Raven from the University of Hip-Hop will tell you that a lot of students, they're not necessarily dropouts; they're push-outs, and they look for forms of expression and communication. And it's interesting that Hugo, the young person that was mentioned before, was writing the word "Exist." You know, why would a young person want to write "Exist" in a public space? It just calls into question a lot of, you know, what are public spaces used for? Is it going to be an exhibition of cameras? Is that what we're going to do? Or are we going to try to work towards an exhibition of things that are meaningful to people in the community and are very culturally significant? You know, my secret agenda would be, you know, I don't necessarily believe that all the graffiti is going to go away. I think that with the invention of spray paint it was an instant form of communication. It's like yelling when there's a big crowd. I just would prefer to see really well-done stuff. You know, and I would prefer to see more pride in our young artists, and I'd like to see their voice heard louder and make them feel like they're important instead of trying to scream out that I exist, don't forget about me. [LR516]

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SENATOR COUNCIL: So when you're talking about push-outs, are you suggesting that because of the inability to tap into the creative side of youngsters in the... [LR516]

WESTON THOMSON: Curriculum. [LR516]

SENATOR COUNCIL: ...educational setting that they're being pushed out because we're not tapping into their creative side? Is that... [LR516]

WESTON THOMSON: I think it's a cultural argument. I think that there are efforts to create certain standardized curriculums that don't necessarily take into account certain cultural aspects that are very important to the way people live, and that does create a dissociation. That's the argument that I've heard. [LR516]

SENATOR COUNCIL: All right. And Senator Nordquist, I think you were at the MOEC meeting last year where Dr. Yong Zhao, I think, am I'm pronouncing his name correctly, was making that correlation between the elimination of a lot of the subject matter areas that tap into creativity and innovation being the cause of a lot of our dropout rates and lower performance on some of the other curriculum areas. So I'm just...we've got to look at this in the universal context because you just can't take it out and look at it in isolation. You have to look at it in the context of how do we reach these young people to provide them a positive avenue for expression. And according to Dr. Yong Zhao if we do that, we also see an increase in their academic performance in other subject areas. [LR516]

WESTON THOMSON: And that's where I think Omaha South High is doing a great job. They had a...you know, if a student was doing well in school, then they were given a chance to do spray painting as part of a class. So that's, you know, a good case in point. But, you know, if they're not getting it in school they're getting it from the companies advertising to them. I mean, a lot of people associate youth with graffiti. It's just...it's being done. It's profitable. And, you know, these youth in some respects are

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being targeted for it. So to have the youth being targeted to associate them with graffiti and making an entertainment thing and a whole business around it, and then to have laws that will convict them and possibly get them a felony for it at the same time, it seems like a difficult train of thought for me to handle for some of it. I do believe and I've had many meetings with Garry that there is an approach where there needs to be a law enforcement preventative, all these other things together, but they need to be happening at the same time in the right ratios for all of us to be successful. [LR516]

SENATOR COUNCIL: Thank you. [LR516]

SENATOR MCGILL: Thank you very much. All right, the next one on the list is Oscar from Deer Park Neighborhood Association. Welcome. [LR516]

OSCAR DURAN: Welcome. Thank you. I'm Oscar Duran. I'm the president of the Deer Park Neighborhood Association. I'm also a neighborhood revitalization specialist for Habitat for Humanity of Omaha. I'm here today to talk about a different thing. You know, I've had the privilege of working alongside people like Councilman Gernandt, Weston Thomson, and Crystal Rhoades from the Neighborhood Center. So one of the things I'd first like to do is really commend all those people, and our city and our state representatives as well, for the wonderful work we're doing in the realms of prevention, intervention, enforcement. They have all been my teachers and so have all of you all. But another one of the big teachers I've had have actually been the younger artists over the course of the last two and a half years. What I want to talk to you a little bit about today is how that actually worked out. What the Deer Park Neighborhood Association does, we actually have worked in the last two years with quite a few different urban art mentorship-type programs. We now sponsor the urban art competition for Omaha. We've done it two years in a row. We've also done three community murals. We've also done a numerous amount of graffiti wipeouts where we take a group of volunteers and we actually get rid of the illegal graffiti. What that's led us to do is actually start a genuine urban art mentorship program that's grass-roots and community-based. And

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what I want that to also say is that there's another type of person at this table that can address these issues with you. So as you all are analyzing what other types of advantages we can do and what types of help you can get for this, I would encourage you all to look at the other community leaders in our communities themselves like members of the Deer Park Neighborhood Association. I remember working with a young girl who did graffiti about two years ago. And you know, it still echoes. Every time I meet a new artist and she said, you know Oscar...I asked her how she got into graffiti and she said, "I just wanted to paint." And I know earlier it was mentioned that graffiti is a type of gateway...a gateway crime in a way, and it is. She says I had to hang out at 2:00 in the morning; I got exposed to drugs, alcohol. And she says, you know, I just wanted to hang out with this...I just wanted to learn how to paint though. I wish there was somebody else. So she's since still doing work. She's doing...she still calls me time to time and we do different projects still. But then you take us a few years later and I worked with another artist, and we've just finished a mural as part of an urban art mentorship program. And, you know, (inaudible) is a great young person and a friend of mine now also. But as part of this urban art mentorship program, what we decided to do at the neighborhood association was not only just teach them about how they can do this art legally, but, one, how there could actually be profits in it, how they can actually do a work force development strategy, because it is. One of the things we've done because we've done a series of these types of urban art programs, I start getting a barrage of e-mails and calls every...I get one about once a week from a church, from a business, from a resident saying I need somebody to come and paint my school bus, I need somebody to come and paint a building. It's great to have people outreaching, but one of the other things to this conversation that I've been learning about is they never ask how can I pay them. In fact, they always say, hey, bring your own paint. I like to use the analogy in saying, well, if I have an empty lot behind my house and I need a deck being built and one of you builds decks for a living, and I call and I tell you, hey, why don't you come over and build the deck for me, I've got an empty space, and bring your own wood. (Laughter) And I like using that analogy because it is more descriptive. And we wouldn't do that. That would be absurd. These kids are very talented. And when I say

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kids, I say under 30 because there's there's a handful of them that are going to do it and they're trying to do work. They're scrambling. So as part of this urban art mentorship program, what it is, is really it's not even about graffiti or urban art, it's more about work force development. How can we connect these young people to other people in the communities and show them how the talent they have is a tangible good. And it is. So now I get a call from another kid. And Jair (phonetic) calls me and he says, hey, I've got somebody that just called me and they wanted me to do their whole car. I have no idea what to charge. We did...we priced out how to do a mural. So he called me and asked me if I could go with him and price it out for him, and I did. Now I don't know a lot about that, but I do know a little bit about contracting, and the bidding processes are very similar. But what that makes me excited about is just there's another possibility for these people to outreach to individuals themselves in our communities, and who knows how many other possibilities and other connections you can make for them. So as we talk about what other ways we can address this, I would say how can we at a state level and a local level put more resources in the hands for community leaders to bridge to these kids so they don't have to go out at 2:00 in the morning and look for it. If they want to paint, they can come to someone else. And you know what? We should actually be building them up. So I really want to, again, thank all those young people who I've been working with because like I said, they're continuing to teach me a lot about the graffiti culture and about themselves and about being young in today's modern age. Weston is an amazing mentor himself, and it's wonderful to have groups like them and also groups like the Packasso Project at South High. But believe me, by my rough estimates those programs can only by capacity serve probably less than 5 percent of the population who does that in Omaha. But there's other ways they can partner, and it's going to be through community leaders and associations. It really will. And it's just going to take that mind-set to say, hey, they can come and help you. And thank you. [LR516]

SENATOR ASHFORD: You know, I did go to the Packasso Project with Cara, and she was telling me...I met with a few of the artists, and one in particular who had...literally was a...had the same sorts of problems that you identified with the young woman, and

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all sorts of problems, the law, graffiti, drugs, everything, now is one of the foremost artists in this program. And they go to homes and are hired to paint the basements of these homes and get paid. I mean, it's...the city of Omaha and what you're doing and what South is doing, it's really gratifying. The other thing that I would mention is that...I mean, I think we've got to set the rules. And everybody...but everybody, if they know the rules clearly, and I think that you're able to tell them what the rules are, that there are these other options. The other thing I would just mention quickly, and Senator Nordquist is primarily responsible for this, when we passed LB63 we put in what was called the Office of Violence Prevention. And what that...and that has a funding source, it has money in it. And the purpose of the Office of Violence Prevention is to fund programs like this that are...and there have been grants awarded certainly to Omaha. So this may be another avenue for your organizations as you move forward. But...and we can...and we probably should look at making that even a more aggressive fund to address the kind of things you're talking about. So thank you very much. [LR516]

OSCAR DURAN: Thank you all for your time. [LR516]

SENATOR ASHFORD: Any questions? Senator McGill. [LR516]

SENATOR MCGILL: I just have...I'm just brainstorming. In Lincoln, we have a gentleman, I don't know if either of you know him, Mike Smith. But he's a skateboarder who's created a location called The Bay. And I just see you as a great partner for what they're trying to do there because it's trying to provide a location for kids and teens after school on Friday and Saturday nights to go and skateboard in a safe place, to have some direct services perhaps, and find ways to inspire youth to learn new skills or improve their skills. And I know he wants to come up to Omaha at one point and create a location. And I could see some of the skills you're teaching being used within that skate park, indoor skate park, and if he moves up here, partnering together. [LR516]

OSCAR DURAN: That would be very exciting. [LR516]

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SENATOR MCGILL: It's that same youth. And I know he's trying to prevent human trafficking, like some of the girls that come through there have been trafficked and have had serious, you know, complications in their lives. But I'm going to get you guys in touch. [LR516]

OSCAR DURAN: Oh, please do. Thank you. [LR516]

SENATOR ASHFORD: And also, I'd also mention Senator Council and her efforts in the north Omaha area is working with these programs and have been incredibly successful. It's one kid at a time is what you're saying, and it's really...this is so impressive. So thank you. [LR516]

OSCAR DURAN: Thank you again. [LR516]

SENATOR ASHFORD Kay Lynn (phonetic). Kayleen. I'm sorry, I know who you are. [LR516]

KAYLEEN YOUNG: Good morning. I'm on Weston's side; I'm a little nervous too. [LR516]

SENATOR ASHFORD: Well, you're right in the middle. [LR516]

KAYLEEN YOUNG: (Exhibit 2) This is my first time too. I'm Kayleen Young. I am the graffiti abatement coordinator with the city of Omaha's public works. I have written copies, statements for the record and copies for each of you there. Today I'm just going to give you a little brief history of the city of Omaha's graffiti abatement program, what we've learned over the years and what we're actually doing right now. Our city of Omaha's graffiti program actually started in 1997 to address the growing problem of graffiti vandalism primarily, as we know, in the south Omaha area. Looking back, the

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city's budget and program staffing that was believed to be adequate at the time was not equipped to keep up with the scope and the spread of graffiti. By 2007, our winter backlog coming out of our winter months reached an all-time high of almost 800. The following year, the city council, staff, and public works department worked on getting an additional van and an additional painter back into the budget. Luckily both of those happened in 2009. This helped our backlog numbers. It kept our study months at around 100, but winters we're still getting up to 300 coming out of winter. In 2011, the Deer Park Neighborhood Association sponsored a firm to come here, the Graffiti Consultants, which Garry kind of mentioned. They came to Omaha and did an analysis of what the city is doing to fight graffiti vandalism, and then the firm made a blueprint for Omaha. They gave us 26 recommendations and 15 considerations for us to implement. And since November of 2011, we have actually implemented 21 of those recommendations and 10 of those considerations, which have put us in a great position right now in our graffiti fight. I'm not going to list all of them because they're in the copy there. But the top five most important ones... [LR516]

SENATOR ASHFORD: We could stay for lunch. [LR516]

KAYLEEN YOUNG: Yeah, can stay for lunch, dinner, whatever. The most important ones was assigning a graffiti coordinator. I'm full time and I'm overall...I'm responsible for the overall operation of the actual graffiti abatement program. We have designed and abated...we design and abate graffiti on a 100-mile route. That's new. We have top ten neighborhoods that we work consistently in. While one painter works the 100-mile route, the other one actually works the hotline work orders. And then they both do top ten neighborhoods when those are done. Additional staffing was added to the program. We had a third staff member added in September of 2011. He was part time and hired strictly to do jobs that are for power washing. As of last week, he is full time. Yea. There are three vehicles working on the street daily, which has taken our backlog on a consistent basis to zero, and our work orders are now getting closed within 24 to 48 hours instead of the 10 to 14 days, hopefully, that we used to go. So that's been a huge

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plus for us having three people on the street every day. Another one was to recruit volunteers with the help of the Neighborhood Center and different neighborhood associations. We're reengaging the citizens of Omaha and made it a communitywide initiative. And then we are also running anti-graffiti monthly meetings. It's a collaborative of stakeholders, many of them are here today. We meet once a month, and our goals are to expand programs that are there now and focus on prevention and intervention. Where we could probably best use your help is when it comes to...gosh, the enforcement side of it. On page 5, we are asking that the court system have a more consistent package for juveniles with graffiti, because right now it's very inconsistent with juveniles. The biggest one is with the state statute right now. A person with a driver's license, it says that they can have that suspended for one year if they are caught doing graffiti crimes. What we would like to recommend and we're asking is that an addition to that be if a person is under the age of 16 and does not have a driver's license, is that when they are charged with that when they go to apply for that that there be a one-year delay. [LR516]

SENATOR ASHFORD: And what would they be charged with, Kayleen? [LR516]

KAYLEEN YOUNG: Graffiti-related crimes. [LR516]

SENATOR ASHFORD: Any graffiti-related crime? [LR516]

KAYLEEN YOUNG: Correct. [LR516]

SENATOR ASHFORD: That they would...even a first offense... [LR516]

KAYLEEN YOUNG: A first offense. [LR516]

SENATOR ASHFORD: ...that you're suggesting that they delay the... [LR516]

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KAYLEEN YOUNG: They delay that. [LR516]

SENATOR MCGILL: Would it be up to the judge in any particular case or is it... [LR516]

KAYLEEN YOUNG: We would like it to be very consistent. [LR516]

SENATOR MCGILL: Okay. [LR516]

KAYLEEN YOUNG: So we're asking and we know that that's a huge rite of passage for a young person and means a lot of freedom. We also know that they...taggers, the kids that are charged with graffiti, hang out with other kids that do graffiti. So if they know these things as a deterrent...we would prefer it as a deterrent. We're hoping that we can push the education in the school system so they know that this consistent package is there, that they know up-front if I get caught with that, I could possibly not get my driver's license. I couldn't wait to get mine when I was 16. So we know as a city is we have lots of hurdles to overcome to become graffiti-free. Education, enforcement, and outreach are still our top priorities. However, with sustained support from local and state level, we think Omaha and communities like us can be graffiti-free eventually. So that's kind of what I have today. [LR516]

SENATOR ASHFORD: Well, very commendable work. And to decrease that delay is...or not delay, the time to address the problem is...that was the...I mean, seven or eight years ago, or whatever, that was big...you've done a terrific job. [LR516]

KAYLEEN YOUNG: A year ago. Yeah, a year ago we were...you know, weeks. [LR516]

SENATOR ASHFORD: You've done a terrific job. Any other questions of Kayleen? Thanks. Mike, do you have a comment on that? I just maybe for the record, could you just explain what crimes we're talking about here that... [LR516]

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MICHAEL GETTY: For the record, the Chair looked at me like he wanted me to come up here, so this isn't my fault that we're here another four minutes later. (Laughter) [LR516]

SENATOR ASHFORD: Well, I just...I'm not quite...no, I'd like to just understand fully what the city is proposing. [LR516]

MICHAEL GETTY: Well, we're...I mean, again, the abatement within the 24 hours is an amazing accomplishment. [LR516]

SENATOR ASHFORD: Right. [LR516]

MICHAEL GETTY: And so that's good. But in terms of working for consistency, that is important. The two things that I'm concerned about in this, one of the two things is the instant communication young people have today, you know. I just got out of court, I got a \$25 fine; or I'll be home in a couple of minutes because I'm done and nothing happened. You know, I mean, those are bothersome. In the other sense though, the word gets out when the word gets out. So if they know there's a consistent proposal even if we don't succeed in our arguments to make these sentencing work the first time, the fact that we're asking for that all the time has to have some effect on everybody. [LR516]

SENATOR ASHFORD: Would that increase...I mean, if you're going to...and I'm the devil's advocate slightly, but if we're going to charge...I assume that Kayleen is talking about ordinance violations or state statute violations,... [LR516]

MICHAEL GETTY: Either, yeah. [LR516]

SENATOR ASHFORD: ...either one, that the...is that going to increase dramatically the number of cases that are tried, I mean...? [LR516]

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MICHAEL GETTY: I doubt it. I doubt it. I mean, the cases I've seen that we've had are almost all of them are kids who are caught literally with the paint on their hands or in their pockets or the markers tossed away a couple of feet. The ones that we don't have that on, we've had some... [LR516]

\_\_\_\_\_: Excuse me. Good morning. [LR516]

MICHAEL GETTY: Good morning. [LR516]

SENATOR ASHFORD: Okay. Garry, can you start over again? [LR516]

\_\_\_\_\_: We would have been here early, but whoever wrote the PR thing, they didn't me tell what building... [LR516]

SENATOR ASHFORD: No, no, I'll start with my introductory statement which was really good I thought, and then Garry (laughter) can come in with his point. [LR516]

MICHAEL GETTY: We can do the condensed version. Yeah. [LR516]

SENATOR ASHFORD: Okay. [LR516]

MICHAEL GETTY: Where were we? Let's see, we're talking about... [LR516]

SENATOR ASHFORD: All right. I think I get it. No, I gotcha. [LR516]

MICHAEL GETTY: Well no, but, I mean, you're talking about the consistencies. Somehow I feel like I got interrupted there for a second (laughter), just a second. In terms of the word getting out, okay, whether we are...our efforts to actually...I mean, my theory is grabbing people by the collar that are doing this. No matter what we do after

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that, that's the most important thing. But I know about I think it was ten years ago, our office engineered an amnesty day where you could come down on a given, I think it was a Wednesday starting at 8:00 in the morning, and you could have...if you had a warrant, you could get the warrant cancelled; if you had a fine that was outstanding, you could come in and get more time on the fine. And we started...and we opened at 5...we were there at 5:30, and we had the Scout...the Omaha Police Boy Scouts or scouting unit there--and my daughter was in it--there to help get people where they were going to go. And there may have been a couple of stories on the news, maybe an article in the paper, pretty minimal publicity; but the good news got out to people. We had about 6,000 people show up in that 24-hour period on the second floor. [LR516]

SENATOR ASHFORD: Yeah. Well, this might be something we can look at if...there might be some the city will put on their list and we can take a look at it. [LR516]

MICHAEL GETTY: I mean, but if we have something consistent, I've always dreamed of that, you know, and we're presenting it, and like I say, we've got all these judges, but. [LR516]

SENATOR ASHFORD: Those judges, you know how they are. [LR516]

MICHAEL GETTY: Yeah, yeah. Just... [LR516]

SENATOR COUNCIL: Mr. Chairman. [LR 516]

SENATOR ASHFORD: Yes, Senator Council. [LR516]

MICHAEL GETTY: I will stop now. I think that's it. [LR516]

SENATOR COUNCIL: Mr. Getty, don't leave. I mean, but that's the dilemma, I mean, even when enacting LB63. And Kayleen, you were talking about a youngster who was

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just applying for their driver's license, I mean. And I don't know if the Chairman and my colleague remember, I mean the struggle with intruding on judicial discretion; and the way the language is written now, it's "may." And we struggled with whether it should be may or shall. [LR516]

SENATOR ASHFORD: Right. [LR516]

SENATOR COUNCIL: And even with like the first step in your program, community service, you know, the issue is, is whether we are prepared to do essentially mandatory minimums. [LR516]

SENATOR ASHFORD: Right. [LR516]

SENATOR COUNCIL: And that's what it would require. IOtherwise it's judicial discretion, and that's where you're implying that the problems arise, because we do have 27. [LR516]

MICHAEL GETTY: Well, but on the other hand I think we should have judicial discretion. There are each... [LR516]

SENATOR COUNCIL: Correct. So how do we strike that balance? [LR516]

MICHAEL GETTY: Well, I think "may" is a good word at this point for a bunch of reasons. I mean, the state statute talks about "shall" on revocations too. [LR516]

SENATOR ASHFORD: Right. [LR516]

MICHAEL GETTY: But our judges will put somebody on probation if they... [LR516]

SENATOR ASHFORD: Well, and if there's diversion, there's no prosecution. [LR516]

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MICHAEL GETTY: Yeah. No, no. [LR516]

SENATOR COUNCIL: Right, right. [LR516]

MICHAEL GETTY: So I think that's...I think may is...I think you guys picked the right word on Round 1 on that. [LR516]

SENATOR COUNCIL: Okay, so but even in terms of the community service hours... [LR516]

MICHAEL GETTY: Well, I mean, those are...that's different than...I think that's a different perspective for our judges anyway in terms of...they...there's no discomfort there I don't think. But again you have kids who have, you know, done the back of sign or did the inside of their locker at Benson. You know, how much do they deserve versus somebody who did the entire 24th Street...or entire Vinton business district. [LR516]

SENATOR COUNCIL: Right. [LR516]

SENATOR ASHFORD: Thanks, Mike. Thanks. You've been very helpful. [LR516]

MICHAEL GETTY: You bet. And I appreciate you asking me back up. [LR516]

SENATOR ASHFORD: Well, would you sit down again please? No. We're...I have no one else on the list, but...oh, come on, Roger. [LR516]

ROGER GARCIA: Good morning, Mr. Chairman, senators of the Judiciary Committee. My comments will be brief today, and I marked them as neutral as I just wanted to provide some food for thought in regards to the provisions passed within LB63. My perspective will be mainly coming from one of a person educated within the realm of

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psychology and also as someone who has worked with youth outreach. I currently work for Boys Town working with many youth within the juvenile system. [LR516]

SENATOR ASHFORD: Roger, just give us your name real quickly. [LR516]

ROGER GARCIA: Roger Garcia; I wrote it there...working with lots of youths within the juvenile system currently through Boys Town. Of course, I'm only representing myself today, and also someone who has worked with youth through various mentoring programs. Now I believe it would be accurate to say that one of the primary goals of LB63 was to of course reduce offenses of unauthorized application of graffiti. So I ask the senators here to consider if the creation of a felony for a second offense is something that really helps the problem regardless of the person making the offense is an adult or a juvenile. Now my main concern here is of course prosecuting a juvenile and putting a felony on their record. For starters I would like to say that a felony may very well create a lifetime struggle to seek employment for these juveniles who will become young adults and who will become adults. I work with lots of young adults who have felonies on their records, and they really struggle to find employment, which then leads to poverty issues and may lead to more delinquency in the future as an adult. I also would like to state that just simply giving them a felony does not teach them a positive alternative, like many of the organizations here try to do that. I believe efforts to teach them positive alternatives, legal means to express themselves artistically with graffiti or any other means to cope with their stresses, to express themselves is more effective rather than the heavy hand of enforcement, especially with the felony charge for a second offense. I also believe that the hope in general, as mentioned, is that a tougher penalty will create less offenses, but I don't myself believe that's the case. And some of the reasonings is that a youth is more focused on the now, the present, what's in front of them, instead of what a felony will do to their lives down the future, a few years down the road when they're in their twenties, thirties, and struggling to find work. They're not really worried about ten years from now what's going to affect them. So more intervention and prevention right there in front of them, like the person from the

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Kent Bellows art studio that can help them to find positive routes, can help them express themselves in positive ways is much more effective than the heavy hand of enforcement. And also, of course, I commend the provision within LB63 that does provide for funding for the Office of Violence Prevention and does provide for grant funding for local nonprofits and other agencies working with youth. So I do believe that provision is a great provision within LB63. Aside from that, we should also consider should one separate between a youth and adult committing this offense. Of course, as mentioned, I believe that's a strong yes. Why? A youth's mind is still maturing. It's not just a myth that was alluded to earlier that teenage stupidity can be (laugh) very prevalent within teenagers. But it's not just a myth or a saying, it's actually biological proof that a teen mind, a teen brain is still maturing. The prefrontal cortex, which is involved with higher-level thinking isn't done maturing until your mid-twenties. So it's a fact that sometimes teens don't make the best decisions, which can include committing graffiti, once, twice, even three times before they receive some sort of intervention that can help them. So, again, alluding to the felony, I think that's not the right way to go. Aside from that, there's been some allusion to, well, we can kind of distinguish whether this should be prosecuted with a felony or not, if it was gang related or if it was just something smaller, even then I would still raise a lot of caution because a lot...for example, I worked with a youth while I was mentoring for a couple of years, and he was trying to stay out of gangs to the best of his ability. But within his neighborhood one gang wanted to beat him up, the other gang wanted to beat him up, and both of them offered him protection if he would join one of the two. So eventually, unfortunately, he joined a gang and of course once you join a gang, they make you do things that you don't want to do. So even if you're caught red-handed with graffiti in your hand painting gang-related graffiti, I still would raise a lot of caution in pursuing that route of prosecuting them with a felony because it doesn't rectify the problem, it doesn't teach them positive solutions, or alleviate issues at home or within the community. So aside from that, I also believe that aside from them not making the most wise decisions when they're young, not all of them are aware of the fact that they can get a felony with a second offense. They're not reading the paper daily or reading legislation that's being

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proposed or passed daily. So unfortunately lots of them make decisions and not knowing the consequences, and even when they know the consequences of course they still make bad decisions because they're youth and not always knowing what the positive routes are. But continued funding of OVP, raising that funding would be great. I definitely recommend that the legislators look into that. Aside from all of this, of course there was the mention and some information I got that, yes, records for juveniles can still be sealed, so that would help them in the future. But that's not always guaranteed. It's up to the judge. And also they may be prosecuted as an adult. And aside from that, if the offense occurs when they're 18, then they can't seal their record because the offense has to occur before they're 18. So I'm working with a youth right now that is 17 going on 18, and he's still struggling to make those wise decisions and make the positive alternatives in behavior. And so I don't think the statement that they can just seal their record really rectifies the issue that a felony can really affect them for the rest of their lives and not give them positive alternatives in the immediate and in the future. So that's all I had for today. I appreciate your time. [LR516]

SENATOR ASHFORD: Thanks, Roger. And thank you. We're all aware of the work you do. If you would...and it is very impactful of course. I just would make a couple of comments. And one is this committee, this Judiciary Committee, primarily through the leadership of Senator Council has recognized the issue of the development of younger people, juveniles, and their brain development and their behaviors are oftentimes driven by those developmental issues. And really Senator Council has really, for the first time in our state, a couple of years ago and continues to, drive this issue; introduced legislation. Now, of course, the Supreme Court of the United States after Senator Council brought it up decided to recognize that brain development is in fact a real thing and that it enters into those decision-making things. The sealing of the records, Nebraska now has the most aggressive sealing of the records law in the country for juveniles, and I grant the point though. I get the point, and you make it; but we have addressed some of that. And then the third thing is, what the city prosecutor has done to get these cases into juvenile court now at the beginning which enhances the

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opportunities for diversion has made a big difference. We only have, you know, since '09, we only have--one, two, three, four, five, six, seven--seven cases that were filed as felonies, and only one of those actually went to a fine. So I think what we struggle with is should there be an upper end to this. If someone gets to the point where they're a second offense and, you know, they're intentionally destroying property, it gets tough to not send that message, but not only to that person but to the community that it's unacceptable behavior. But having said that, I get what you're saying. We're going to have so many bills in the Legislature this year dealing with brain development and all of those things, and again thanks to Senator Council for what she's brought to the table in that regard. Any questions? [LR516]

ROGER GARCIA: Thank you. [LR516]

SENATOR ASHFORD: Senator Nordquist, you've got to sum up. Does anybody else wish to...Senator Nordquist, would you like to... [LR516]

SENATOR NORDQUIST: Well, again, thank you, Senator Ashford and members of the committee, for holding this hearing today, for making this a priority. You can hear from the people behind us, the people that testified today that this is a priority for them. They have shown a strong commitment to addressing this issue, to moving us forward, and really to serve to help give us another building block to build upon what we did four years ago with the first interim study. We addressed some enforcement issues. But I think Garry was the one who talked about the three-pronged approach. And the city is obviously doing a fabulous job getting on top of the abatement within 24 hours. The enforcement issue, a few issues were raised about that today about how we can maybe get a little more consistency in that side. But the key piece, we've got a lot of great prevention programs going on now and I think we can build on that, and we can become a partner. Through the Office of Violence Prevention, the state can become a partner in some of those programs. And with all of those three pieces in place, we're going to make as much progress as anyone possibly can. So thank you again for your

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commitment and we'll keep moving forward on this. [LR516]

SENATOR ASHFORD: And I would second that. This is one of the most positive hearings that I can recall having on an issue that we started getting involved in four or five years ago. And it is a partnership. The city must be commended. The arts programs are just very exciting. And we can work on Office of Violence Prevention. I think we need to expand that program. So thank you. Thank you all. [LR516]

SENATOR NORDQUIST: Thank you. [LR516]