



LEGISLATIVE PRIORITIES

# New York State Law Enforcement Council

2007



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*New York State Association  
of Chiefs of Police*

*New York State Sheriffs'  
Association*

*Citizens Crime Commission  
of New York City*



## PREFACE

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The New York State Law Enforcement Council was formed in 1982 as a legislative advocate for New York's law enforcement community. The Council's members represent the leading law enforcement professionals throughout the State, including the Attorney General of the State of New York, the New York State District Attorneys Association, the New York State Association of Chiefs of Police, the New York State Sheriffs' Association, the New York City Criminal Justice Coordinator, and the Citizens Crime Commission of New York City. Since its inception, the Council has been an active voice and participant in improving the quality of justice and in the continuing effort to provide for a safer New York.

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## PROVIDE TOOLS TO INVESTIGATE, CHARGE, AND PROSECUTE GANGS AND PROTECT WITNESSES

In New York, a new gang threat is emerging from unexpected quarters. Between 1999 and 2005, violent crime in the State excluding New York City increased by 10%. Fifty-five percent of reported crime in New York now originates from the counties outside New York City, up from 49% in 1996. In 2005, murder and aggravated assault were each up 5% from 2004, while robbery was up 14.4%, to the highest levels since 1997. Not only did the number of violent crimes increase, but the likelihood of firearms being involved in these crimes also increased.<sup>1</sup>

Many expert observers have attributed these disturbing trends to increased gang activity in suburban and rural areas. According to the office of New York Senator Charles Schumer, statistics suggest that gang membership in Nassau County has risen to three thousand people from a handful a decade ago, while in Suffolk County, gang membership rose from an estimated two hundred in 1997 to about fifteen hundred in 2006.<sup>2</sup> Even in New York City, the estimated number of gang members grew from twelve thousand to fifteen thousand between 2003 and 2006.<sup>3</sup> The State Commission of Investigation concluded in 2006 after a year of study that “gang activity in New York has proliferated and become increasingly violent, and now poses a serious threat to the public’s safety and welfare.”<sup>4</sup> Not only are gangs known to recruit among vulnerable youths and contribute heavily to drug and gun

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DIV. OF CRIM. JUST. SERVICES, CRIMESTAT REP. 3, NEW YORK STATE CRIMINAL JUSTICE 2006 CRIMESTAT REPORT 2-3 (2007), available at <http://criminaljustice.state.ny.us/pio/annualreport/2006crimestatreport2-9-07.pdf>.

2

Press Release, Sen. Charles Schumer, Schumer, Nassau D.A. Rice Unveil New Plan To Fight Gang Violence (Apr. 3, 2006), available at <http://schumer.senate.gov/SchumerWebsite/pressroom/record.cfm?id=259509&>.

3

John Toscano, *Gang Incidents Rise As Overall Crime Falls, Vallone Panel Told*, QUEENS GAZETTE, Oct. 11, 2006, available at <http://www.qgazette.com/news/2006/1011/features/007.html>.

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STATE COMM’N OF INVESTIGATION, COMBATING GANG ACTIVITY IN NEW YORK 1 (May 2006), available at <http://www.sic.state.ny.us/Docs/Public%20Reports/pdf/gangs.pdf>.

crime, but they also terrify their communities and escalate violence in a costly and senseless manner.

Surprisingly, nowhere in New York's Penal Law is "gang" even defined. It is time for New York to provide law enforcement with the tools necessary to investigate, charge, and prosecute criminal street gangs.

#### RECENT NEWS HEADLINES

### THE OBSERVER-DISPATCH

January 24, 2007:

Gang Member Says Teen's Beating Death Was Part of Initiation

### The Journal News

March 17, 2007:

Yonkers Slay Victim Mistaken for Member of Rival Gang, Police Say

January 18, 2007:

Mount Vernon Boy Beaten, 2 Arrested in Apparent Gang Fight

### The Sun

March 6, 2007:

16-Year-Old Stabbed, Likely as Result of Gang Dispute

## THE BUFFALO NEWS

March 3, 2007:

Security at High School Beefed up in Wake of Rival Gang Fights

August 28, 2006:

Drugs, Gangs Blamed for Surge in Killings; Commissioner Describes Crimes as Random

July 14, 2006:

West Side Becomes War Zone; Turf War Between Two Gangs With Members as Young as 10 Is Blamed for 3 Killings

## Newsday

October 2, 2006:

Girl's 15th Birthday Marred by Melee When Street Gang Dispute Among Party Crashers Injures Two, Cops Say

#### GANGS CONTRIBUTE TO GUN, DRUG, AND VIOLENT CRIME

Guns are inextricably linked to gang culture. According to FBI data for 2005, a firearm is the murder weapon in 94% of gang killings, compared to 68% for all murders.<sup>5</sup> A survey of high school students in Seattle, Washington revealed that gang members can obtain guns easier than their non-gang member classmates, and are more likely to actually own a gun as well.<sup>6</sup> A nationwide survey of juvenile arrestees revealed that 31% of gang members surveyed reported carrying guns all or most of the time, as opposed to 20% of the juvenile arrestees who did not belong to gangs.<sup>7</sup>

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UNIF. CRIME REPORTING PROGRAM, FBI, DEP'T OF JUSTICE, EXPANDED HOMICIDE DATA TBL. 10, CRIME IN THE UNITED STATES, 2005 (2006), [http://www.fbi.gov/ucr/oscius/offenses/expanded\\_information/data/shrtable\\_10.html](http://www.fbi.gov/ucr/oscius/offenses/expanded_information/data/shrtable_10.html).

6  
NAT'L VICTIM ASSISTANCE ACAD. TEXTBOOK ch. 22, § 3 (Anne Seymour et al. eds., June 2002), [http://www.ojp.gov/ovc/assist/nvaa2002/chapter22\\_3.html](http://www.ojp.gov/ovc/assist/nvaa2002/chapter22_3.html).

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Scott H. Decker et al., *Illegal Firearms: Access and Use By Arrestees*, 163496 NAT'L INST. OF JUST. RES. IN BRIEF 2 (1997), available at <http://www.ncjrs.gov/pdffiles/163496.pdf>.

Not only are guns more easily accessible to gang members, but gang culture also condones the criminal use of guns. In the survey, one-half of gang members who reported owning a gun also said they had used one to commit a crime, as opposed to one-third of other juvenile arrestees who reported owning a gun.<sup>8</sup> Gang members were also more likely than non-members to agree with statements like “It is OK to shoot someone who disrespected you” or “Your crowd respects you if you have a gun.”<sup>9</sup>

Evidence suggests that the drug activities most strongly associated with gangs are on the rise in New York State. The State Police’s Community Narcotics Enforcement Teams, which combat street-level drug trafficking and related crimes outside New York City, reported making 19% more drug arrests in 2006 than in 2005.<sup>10</sup> On this level of street dealing, gangs are the primary distributors of drugs throughout the United States. According to the 2005 National Gang Threat Assessment, nearly 61% of law enforcement agencies surveyed from the northeastern U.S. report a moderate-to-high level of gang involvement in street sales of drugs.<sup>11</sup>

Regions experiencing an increase in gang-related drug trafficking can expect to see a rise in other crime rates. The correlation between gang-related drug trafficking and other crimes is especially strong with regard to robbery and aggravated assaults,<sup>12</sup> both of which increased last year outside New York City.<sup>13</sup>

Other researchers have found youth gang members to be disproportionately represented among serious violent and chronic juvenile offenders. For example, a study of criminal activity among Rochester adolescents

revealed that two-thirds of the chronic violent offenders in the sample were gang members, and that gang members were on average responsible for four times as many offenses as their share of the total study population would suggest.<sup>14</sup>

#### DEFINE “GANG” IN THE PENAL LAW

A review of the thirty-one states that have defined “criminal street gang,” “criminal gang,” and “street gang” reveals at least twenty-two substantially different definitions. Clearly, there is a wide range of opinions on just what constitutes a gang.

A definition of “gang” is crucial to effectively combating gang violence and to ensuring communication between law enforcement agencies. New York must establish a uniform understanding of what constitutes a gang before it can compile reliable statistics on the frequency, severity, and types of gang violence. The Compstat and Crimestat programs in New York City and throughout the State have both proven the value of gathering timely and specific data on criminal offenses. With this information, law enforcement can efficiently allocate resources to meet the latest challenges in gang activity. Collecting such data will also aid in prevention efforts, helping policymakers to identify and address the factors that are causing individuals to join gangs in the first place.

#### ESTABLISH ENHANCED PENALTIES FOR GANG-RELATED CRIMES

Once New York establishes a useful definition of “gang,” it will have a cornerstone upon which to

8  
*Id.* at 3.

9  
*Id.* at 4.

10  
DIV. OF CRIM. JUST. SERVICES, *supra* note 1, at 11.

11  
NAT’L ALLIANCE OF GANG INVESTIGATORS ASS’NS, 2005 NATIONAL GANG THREAT ASSESSMENT 18-19 (2005), available at [http://www.ojp.usdoj.gov/BJA/what/2005\\_threat\\_assessment.pdf](http://www.ojp.usdoj.gov/BJA/what/2005_threat_assessment.pdf).

12  
*Id.* at 1.

13  
DIV. OF CRIM. JUST. SERVICES, *supra* note 1, at 10.

establish effective penalties for gang activity in New York. Seven years ago, New York passed legislation imposing additional penalties for certain crimes motivated by bias and prejudice. The legislative findings for the Hate Crimes Act of 2000 stated that “hate crimes can and do intimidate and disrupt entire communities and vitiate the civility that is essential to healthy democratic practices.”<sup>15</sup> Like hate crimes, gang violence promotes ongoing feuds and continuing criminality that can poison and terrorize entire communities. Crimes committed in furtherance of gang activities ought to be subject to higher penalties, as they are in at least twenty-one other states.

#### FUND A STATE WITNESS PROTECTION PROGRAM

Successful prosecution of gang criminals depends on producing key witnesses in court. Yet gang violence is intended to have terrorizing effects on the community from which witnesses are likely to come. Gangs are known to threaten and intimidate witnesses as a way of avoiding prosecution. In February 2007, the *New York Times* reported that witness intimidation is so prevalent and effective in Newark, New Jersey that the Essex County prosecutor will not authorize arrest warrants unless the case can proceed without the cooperation of witnesses, for example through the use of corroborating forensic evidence. The *Times* cited fourteen recent murders in Newark where no charges have been filed in spite of solid eyewitness identifications.<sup>16</sup> In order to encourage community members to come

forward and cooperate with investigations, law enforcement must assure witnesses of the State’s ability to protect them and their families from harm.

Most people are familiar with the federal witness protection program, which boasts a hundred-percent success rate and has been glamorized by movies and television. California, Illinois, Maryland, and six other states have a similar program for witnesses in local trials, but New York does not. For instance, Massachusetts recently created a state witness protection program which helped relocate thirty-seven witnesses and family members involved in sixteen cases in its first three months of existence.<sup>17</sup> Such programs help local and state prosecutors pay for things like hotel rooms, moving costs, and police escorts for vulnerable witnesses.

Aside from a small, temporary grant to the New York Prosecutors Training Institute, New York prosecutors’ offices have to use their own funding to protect vulnerable witnesses. These expenses are paid out of the office’s normal operating budget or funds seized from other criminal enterprises. While larger counties’ budgets can sometimes absorb the costs of protecting witnesses, smaller prosecutors—who are handling more of these cases as gangs migrate upstate—are unable to provide the necessary funds. New York State should establish a state-funded program to provide witnesses with emergency, short-term, and permanent protection.

<sup>15</sup> N.Y. PENAL LAW § 485.00.

<sup>16</sup> David Kocieniewski, *With Witnesses at Risk, Murder Suspects Go Free*, N.Y. TIMES, Feb. 27, 2007, at A1.

<sup>17</sup> Suzanne Smalley and Lisa Wangsness, *Witness Relocation Program Draws High Praise From Officials*, BOSTON GLOBE, Aug. 14, 2006, at B1.

Tampering “protects those who have acquired witness status” while intimidating “was meant to protect victims prior to them actually becoming witnesses in a criminal proceeding.” *People v. Sajous*, 173 Misc. 2d 55, 58 (Dist. Ct. Nassau County 1997).

### **RAISE PENALTIES FOR WITNESS TAMPERING AND INTIMIDATION**

Under current New York law, both witness tampering and witness intimidation<sup>18</sup> are just E felonies if no physical injury results to the victim. And of course, witness intimidation can be all too effective with just the threat of physical injury. A defendant charged with a high-level felony has little to lose by attempting to dissuade witnesses from testifying against him. Gang members are more than willing to risk an E felony tampering or intimidating charge in order to avoid being convicted on more serious original charges. Witness intimidation and tampering are also widespread in domestic violence and sexual assault cases. Even bribing a witness, which does not place the witness in fear of injury, carries a higher penalty than the base-level offenses for witness tampering and intimidation. New York should raise its penalties for witness tampering and intimidation in order to take these perverse incentives away from violent, dangerous defendants.

### **PROVIDE RESOURCES FOR LAW ENFORCEMENT**

Finally, New York should provide funding for police and prosecutors to conduct long-term investigations of criminal gang activities. Such investigations, which rely on time- and resource-intensive wiretaps and purchases of drugs and firearms by undercover police officers, are an expensive prospect for both large and small counties. Larger district attorney’s offices occasionally use New York’s Organized Crime Control Act to good

effect in prosecutions against the most structured and organized gangs. However, in the smaller upstate counties where gang activity has increasingly migrated in the past decade, law enforcement lacks the funding and resources needed to build these complex cases. New York State should provide funding for these small counties to pursue gangs that otherwise go unapprehended, and for larger counties to investigate more moderately-sized, but still dangerous, criminal enterprises.