

LEGISLATIVE PRIORITIES

New York State Law Enforcement Council

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*New York State Sheriffs'
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*Citizens Crime Commission
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PREFACE

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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TARGET HIGH-LEVEL MARIJUANA TRAFFICKERS

Although marijuana is often seen as a “harmless” drug, it is actually a profitable business for violent gangs and drug traffickers. In New York, penalties for possession and sale of marijuana are much lower than those for narcotic drugs and other controlled substances. While those possessing less than one pound of narcotics are subject to a minimum of eight years in prison, a person possessing over fifty pounds of marijuana might face no prison time at all. But marijuana is no small-time business. A recent article in *Forbes* described one recently-dismantled New York City marijuana home delivery service with profits of over \$17,000 per day.¹ For drug dealers, marijuana is a high-profit enterprise with little risk from law enforcement.

Unfortunately, like all illegal drug dealing, marijuana is associated with street violence. Drug dealers intimidate and endanger neighborhood residents as they stake out locations for dealing and vie with one another for turf. Recently, police in Queens arrested fifty-three dealers of crack and marijuana in the Hammel Houses in the Rockaways. In addition to making forty-eight separate drug sales to undercover officers, the competing gangs (one known as Get It In Bricks, a reference to marijuana) were responsible for twelve shootings, including two deaths.²

The Law Enforcement Council proposes legislation to target large-scale marijuana dealers and drug-selling organizations as a way to prevent marijuana

¹ Monte Burke, *Inside Dope*, FORBES, Mar. 26, 2007, at 78.

² Rocco Parascandola, *Dozens of Drug Arrests*, NEWSDAY, Feb. 3, 2007, at A7.

dealing in our cities and its accompanying violence. These proposals specifically target two groups of major traffickers:

- Those who import large quantities into the state's border counties and from there into major cities;
- Those who supervise and profit from marijuana-selling organizations.

The proposals described below are entirely consistent with New York's policies towards marijuana sale and use in small quantities. Low-level dealers and users would not be affected, and would continue to benefit from laws designed to offer marijuana users a second chance. The Law Enforcement Council seeks to target those who treat marijuana as a business, making hefty profits by supplying New York's cities with large quantities of the drug.

ENHANCE PROSECUTIONS OF LARGE-SCALE MARIJUANA TRANSACTIONS

While street-level sales often involve small amounts of drugs, marijuana is typically imported into the state and transported to major cities in large amounts. Near New York's borders, traffickers will import hundreds of pounds of marijuana into the state in a single shipment. Shipments into cities may be broken down, but still consist of very large amounts. These large-quantity shipments are the source for the street-level dealers that plague city neighborhoods. They enable drug dealing gangs to profit from selling marijuana.

Yet New York's Penal Law does not differentiate between these major traffickers and dealers who may

have access to only a few pounds. Sale of a backpack-size amount of marijuana is equivalent under New York law to sale of a truckload.

The Law Enforcement Council supports two new class B felonies that would penalize possession and sale of large amounts of marijuana, such as five times the amounts that would lead to a prosecution for Criminal Possession of Marijuana in the First Degree or Criminal Sale of Marijuana in the First Degree. Like other class B drug offenses, a conviction for one of these large-quantity marijuana crimes would lead to a mandatory prison sentence.

USE EXISTING STATUTES TO TARGET MARIJUANA ORGANIZATIONS

Efforts to combat marijuana-selling organizations are impaired by the inability to use existing statutes targeted at organized crime against marijuana dealers. The Organized Crime Control Act does not permit application of the statute to marijuana offenses.

Enterprise Corruption

The Organized Crime Control Act “focuses on criminal enterprises because their sophistication and organization make them more effective at their criminal purpose and because their structure and insulation protect their leadership from detection and prosecution.”³ The article defines a number of offenses, including sale and possession of controlled substances, as “criminal acts” that a criminal enterprise might engage in. Because these enumerated offenses do not include any marijuana crimes, organized businesses that distribute

marijuana are not subject to prosecution for the crime of Enterprise Corruption, a class B felony. As more and more drug gangs turn to marijuana as their major source of profit, law enforcement is hampered by its inability to target those at the highest levels of these organizations.

In addition to the felony penalties facing a gang leader convicted of Enterprise Corruption, the Organized Crime Control Act contains special forfeiture provisions to ensure that the criminal organization cannot continue to operate in the absence of its former leaders. Adding marijuana offenses to the Organized Crime Control Act would enable law enforcement to seize profits of the illegal business, as well as assets used to facilitate the organization's activities.

Money Laundering

A profitable criminal enterprise faces the problem of attempting to disguise the origins of illegal income, a goal which is primarily accomplished through money laundering. Money laundering can take various forms, but its primary purposes are to legitimize criminal proceeds or make them available to further the criminal enterprise. As with the crime of Enterprise Corruption, money laundering can only be prosecuted where the funds are the proceeds of certain types of "criminal acts" or where the funds are used to facilitate one of the specified criminal acts. Since the money laundering statute refers to the list of criminal acts that constitute the crime of Enterprise Corruption, money laundering currently cannot be charged where the criminal operation is devoted to selling marijuana.

When gang leaders have successfully insulated themselves from the handling of the actual drugs, a money laundering prosecution may be the only effective way to dismantle a drug organization. Given that marijuana organizations may take on the same structures as narcotics organizations and become equally profitable, marijuana should be included as a "criminal act" under Penal Law Section 460.10 to enable money laundering prosecutions against the leaders of these groups.