

LEGISLATIVE PRIORITIES

New York State Law Enforcement Council

2008



NEW YORK STATE LAW ENFORCEMENT COUNCIL

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of New York City*



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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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 2006, violent crime in the state excluding New York City increased by 13%. Fifty-seven percent of reported crime in New York now originates from the counties outside New York City, up from 42% in 1994. Murders and rapes outside New York City have risen over the past decade; robberies increased almost 6% between 2005 and 2006. Not only did the number of violent crimes increase, but the likelihood of firearms being involved in these crimes also increased by 16% since 1997.¹

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 3000 people from a handful a decade ago, while in Suffolk County, gang membership rose from an estimated 200 in 1997 to about 1500 in 2006.² Even in New York City, the estimated number of gang members grew from 12,000 to 15,000 between 2003 and 2006.³

The nature of these gangs is also changing. While many smaller cities and towns have long had local gangs and crews of “wannabe” gangsters, these groups are now forming connections to larger gangs with a national presence, which provide better access to guns, drugs, and safehouses.⁴ The State Commission of Investigation concluded in 2006 after a year of study

¹ DIV. OF CRIM. JUST. SERV., CRIME IN NEW YORK STATE: 2006 FINAL DATA 14 (2007), available at http://criminaljustice.state.ny.us/pio/annual-report/2006_finalrelease.pdf.

² Press Release, Office of Senator 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>.

⁴ John Doherty, *Big-Time National Gangs Hooking up with Local Crews*, TIMES HERALD-RECORD, June 17, 2007, available at <http://www.recordonline.com/apps/pbcs.dll/article?AID=/20070617/NEWS/706170331>.

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.”⁵ Not only are gangs known to recruit among vulnerable youths and contribute heavily to drug and gun 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

TIMES UNION

December 3, 2007:

Albany Man Admits Drug, Gang Connection

THE OBSERVER-DISPATCH

January 24, 2007:

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

The Post-Standard

January 11, 2008:

Man Admits Running Violent Drug Ring in Upstate NY

THE BUFFALO NEWS

February 13, 2008:

Two Teens Injured in Gang-Related Attack

GANGS CONTRIBUTE TO GUN, DRUG, AND VIOLENT CRIME

Guns are inextricably linked to gang culture. According to FBI data for 2006, a firearm is the murder weapon in 94% of gang killings, compared to 68% for all murders.⁶ 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.⁷ 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.⁸

Not only are guns more easily accessible to gang members, but gang culture also condones the criminal use of guns. In the survey of juvenile arrestees, 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.⁹ 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.”¹⁰

The drug activities most strongly associated with gangs are also 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 2005.¹¹ 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%

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

6 UNIF. CRIME REPORTING PROGRAM, DEP’T OF JUSTICE, CRIME IN THE UNITED STATES, 2006 tbl. 10 (2007), http://www.fbi.gov/ucr/cius2006/offenses/expanded_information/data/shrt-able_10.html.

7 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.

8 Scott H. Decker et al., *Illegal Firearms: Access and Use By Arrestees*, I63496 NAT’L INST. OF JUST. RES. IN BRIEF 2 (1997), available at <http://www.ncjrs.gov/pdffiles/i63496.pdf>.

9 *Id.* at 3.

10 *Id.* at 4.

11 DIV. OF CRIM. JUST. SERV., CRIMESTAT REP. 3, NEW YORK STATE CRIMINAL JUSTICE 2006 CRIMESTAT REPORT 11 (2007), available at <http://criminaljustice.state.ny.us/pio/annualreport/2006crimestatreport2-9-07.pdf>.

of law enforcement agencies surveyed from the north-eastern U.S. report a moderate-to-high level of gang involvement in street sales of drugs.¹²

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,¹³ both of which increased in 2006 outside New York City.¹⁴

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.¹⁵

ENABLE IMPROVED ENFORCEMENT

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 establish effective penalties for gang activity in New York, especially penalties targeting gang leaders. Eight 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.”¹⁶ 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.

PROTECT WITNESSES

Raise Penalties for Witness Tampering and Intimidation

Under current New York law, both witness tampering and witness intimidation¹⁷ are just E felonies if no

¹² 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.

¹³ *Id.* at 1.

¹⁴ DIV. OF CRIM. JUST. SERV., *supra* note 11, at 10.

¹⁵ TERENCE P. THORNBERRY ET AL., GANGS AND DELINQUENCY IN DEVELOPMENT PERSPECTIVE (2003), cited in James C. Howell, *The Impact of Gangs on Communities*, 2 NAT’L YOUTH GANG CTR. BULLETIN (Office of Juvenile Justice and Delinquency Prevention, Wash., D.C.), Aug. 2006, at 2.

¹⁶ N.Y. PENAL LAW § 485.00.

¹⁷ A tampering charge “protects those who have acquired witness status” while the statutes criminalizing intimidation of a victim or witness were “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).

physical injury results to the victim.¹⁸ 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.¹⁹ New York should raise its penalties for witness tampering and intimidation in order to take these perverse incentives away from violent, dangerous defendants.

Encourage Communities to Fight Back Against Witness Intimidation

The failure of witnesses to step forward and report crimes allows criminals to continue their unlawful acts. Especially in communities where gangs are prevalent, residents often fear retribution or stigmatization if they come forward. In order to help fight this fear, additional state funding should be provided for public education campaigns like the “You Bet I Told” program, spearheaded in January 2008 by a Rochester church. “You Bet I Told” seeks to reverse the negative perception of witnesses through a multifaceted approach, including public forums and an education campaign featuring signs on buses and billboards.²⁰

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 Act²¹ 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.

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N.Y. PENAL LAW §
215.00.

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Leah George, *You Bet I Told’ Campaign Underway*, R NEWS, Jan. 5, 2008, <http://www.rnews.com/print.cfm?id=57057>.