

2. PROVIDE TOOLS TO PROTECT VICTIMS AND WITNESSES

Certain classes of crimes, by their nature, are designed to strip victims of their sense of self and security. Without disempowering and degrading the affected community, those classes of crimes cannot thrive. Gang violence and domestic violence epitomize this paradigm. Perpetrators seek to inflict not only physical, but also mental and emotional violence against their victims. An integral part of gang and domestic violence is silencing victims and witnesses through intimidation and threats of violence.

Witness intimidation commonly takes two mutually reinforcing forms.

- *Case-specific intimidation* – threats or violence intended to discourage a particular person from providing information to police or from testifying in a specific case.
- *Community-wide intimidation* – acts that are intended to create a general sense of fear and an attitude of non-cooperation with police and prosecutors within a particular community.¹

At the micro level, domestic violence and gang violence threaten and intimidate individuals; at the macro level, they terrorize family units, neighborhoods, and entire communities. Paradoxically, offenders are rewarded for their efforts; once victims and witnesses are threatened and intimidated into keeping silent, perpetrators are free to strike again.

The Law Enforcement Council recommends policy and procedural actions that will reduce incentives for intimidation;

enhance punishments for intimidation; and establish a new cultural norm that restores fundamental rights to individuals and communities.

GANGS INTIMIDATE WITNESSES, STRIP COMMUNITIES OF FUNDAMENTAL RIGHTS

Gang presence, and the pervasive street ethos and concurrent violence that encourage and often enforce a code of silence, are eating away at communities across the state. Over the last decade, it has become apparent that gangs and the violent crimes, drug crimes, and quality of life crimes that typically surround gangs are not confined to New York City.

The outreach efforts of Operation IMPACT, a state initiative to reduce violent crime, indicate that the spread of violent crime in upstate New York is connected to gang operations outside of New York City. Operation IMPACT provides direct support to the 17 counties upstate and on Long Island that account for 80 percent of the crime committed outside of New York City.

In May 2010, 18 members and associates of the Bloods and Latin Kings were arrested and indicted in the city of Newburgh in Orange County, New York. Newburgh, with a population of approximately 29,000, led the state in violent crimes per capita in 2008 and was on track to do so again in 2010.² Of the 16 homicides that occurred in Newburgh over the past two and a half years, gang violence was responsible for all but three of them, including the five murders that occurred since January 2010. In response to the escalation of gang crimes, U.S. Senator Charles Schumer testified to the troubling frequency of the “reports of shootouts in the town streets, strings of robberies and gang assaults with machetes.”³

PERCENTAGE CHANGE IN GANG PROBLEM ESTIMATES FROM 2002 TO 2007

	GANG-PROBLEM JURISDICTIONS	GANGS	GANG MEMBERS
RURAL COUNTIES	+24.1	+64.4	+36.2
SMALLER CITIES	+27.4	+40.9	+34.0
SUBURBAN COUNTIES	+33.2	+17.0	+12.2
LARGER CITIES	+12.1	+15.3	-.07
OVERALL ESTIMATE IN STUDY POPULATION	+25.1	+25.5	+7.7

The nature of the gangs seen in upstate New York is also changing. While many smaller cities and towns have long had local gangs and crews of loosely organized low-level criminals, these groups are now forming connections to larger gangs with a national presence, which provide better access to guns, drugs, and safe houses.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.

COOPERATING WITNESSES, VICTIMS TARGETTED

In a Dutchess County prosecution for murder arising out of a street shooting, the prosecutor was careful not to disclose the identity of the witnesses during the pendency of the case. At the time of jury selection, the prosecutor, as required by law, disclosed the names of the witnesses. Upon announcement of the names, three associates of the defendant, one of whom was a relative, stood up, looked at the prosecutor, and left the courtroom. Defense counsel then informed the court that he had previously represented a witness and had a conflict

of interest and had to withdraw from the case. The case was then adjourned for several weeks. The prosecutor promptly tried to contact the witnesses. He was unable to reach one of them. He soon learned that the witness had been followed and shot in his car. The shooter was a relative of the defendant. The gun used in the shooting was found in the relative's car. After the shooting, all of the witnesses in the case refused to cooperate. The prosecutor, faced with a much weakened case, had to accept a plea to a lesser offense.

The National Center for Victims of Crime, in its report *Snitches Get Stitches*, discovered through interviews of young people that “being labeled a snitch carries a price, not just of potential violence, but of ostracism by neighbors and peers.” It has evolved from an underground street code to a social norm, publicized by musicians and sports figures who perpetuate the undermining of basic rights. Intense societal pressure has spread so that not only are *witnesses* discouraged from providing information to law enforcement, *victims* are now less willing to report crimes committed against them. This is problematic both for communities and law enforcement. Early studies found that nearly 33 percent of witnesses were threatened, and even those that were not threatened feared reprisal.⁷ Another study found that more than 50 percent of prosecutors in large jurisdictions reported that victim and witness intimidation was a major problem in trying cases.⁸

DOMESTIC VIOLENCE DESTROYS LIVES, FAMILIES

As gang violence decimates the safety and the fabric of community life, domestic violence destroys any sense of safety and control within family life.

Domestic violence is a pervasive problem. In New York City alone, there were 61 family-related homicides last year. Nationally, an estimated 1.3 million women are victims of physical assault by an intimate partner each year, and one in four women will experienced domestic violence in her lifetime.⁹ Domestic violence affects people of all ages; however, young women are the most frequent victims of these attacks. Approximately one in five female high school students reported being physically and/or sexually abused by a dating partner.¹⁰ Vulnerable populations are also recurring targets of domestic violence. Nearly 50 percent of homeless women and children have been victims of domestic violence, and it is estimated that anywhere between 3.3 million and 10 million children witness domestic violence annually.¹¹

“Domestic violence is the willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior perpetrated by an intimate partner against another. It is an epidemic affecting individuals in every community, regardless of age, economic status, race, religion, nationality or educational background. Violence against women is often accompanied by emotionally abusive and controlling behavior, and thus is part of a systematic pattern of dominance and control. Domestic violence results in physical injury, psychological trauma, and sometimes death. The consequences of domestic violence can cross generations and truly last a lifetime.”¹²

Victims of domestic violence are brutalized by a person whom they know and with whom they share their lives. Violence has been brought into a part of their lives that most people consider to be a place of safety. In depriving their victim of this sanctuary, the abuser often seeks to

dominate and eliminate the victim's sense of agency. Perversely, perpetrators often make their victims feel as though the violence is the victim's fault. This cycle of abuse and control makes domestic violence victims particularly vulnerable to intimidation and threats aimed to prevent them from pursuing the prosecution of their abuser.



Instances of domestic violence remain some of the most chronical-ly under-reported crimes. Only approximately one-quarter of all physical assaults, one-fifth of all rapes, and one-half of all stalkings perpetuated against women by intimate partners are reported to the police.¹⁴ What makes the under-reporting of these crimes even more dangerous is that domestic violence is frequently part of an escalating

pattern of abuse. According to the New York City Mayor's Office to Combat Domestic Violence, 38 percent of battered women will be victimized again within six months. And an abuser who beats a woman while she is pregnant is three times more likely to try to kill her. Every year, one in three women who is a victim of homicide has been murdered by her partner.¹⁵

Perpetrators of violence depend upon a victim's silence as they continue to terrorize their victims and their community. According to the New York City Mayor's Office to Combat Domestic Violence, 66 percent of domestic violence victims who have been killed had prior incidences of abuse which were never reported to the police.

It is critical to encourage victims of domestic violence to come forward about their assault and testify against their abusers in order to break the cycle of violence. However, all too often, domestic violence abusers successfully use intimidation and threats to prevent their victims from pursuing prosecution.

LEGISLATION MUST ADDRESS REAL CASES OF INTIMIDATION

Under current New York State laws, criminals have much to gain and little to lose by interfering with state or local investigations.

If you commit a crime, you will usually escape punishment if no one testifies against you. So you have an interest in keeping witnesses from testifying. If criminals often succeed in deterring testimony, however, the criminal justice system withers, and laws can be broken with impunity. Witness intimidation is a fundamental threat to the rule of law.¹⁶

The three statutes that sound like they should counteract witness intimidation and obstruction of justice – Obstruction of Governmental Administration in the Second Degree, Obstruction of Governmental Administration in the First Degree, and Tampering with a Witness¹⁷ – are not strong enough to deter the pervasive tactics used to prevent witness cooperation.

Take, for instance, Obstructing Governmental Administration in the Second Degree. While it specifically prohibits “releasing a dangerous animal” with the intent that the animal will impede governmental administration, it fails to explicitly prohibit something as basic as enticing someone to halt the progression of a governmental investigation. And even if someone were to be charged under this statute, the most severe penalty is a *misdemeanor*, which is the same punishment imposed for jumping a subway turnstile. Given the relatively low penalties for violating this statute, it is unsurprising that a defendant on trial for a high-level felony offense, such as murder, would engage in witness intimidation.

The only available *felony*, Obstructing Governmental Administration in the First Degree, solely applies to “interfering with a telecommunications system thereby causing serious physical injury to another person.” In short, if you interfere in a government investigation, but do not cause *physical injury by interfering with a telecommunications system*, the most you could be charged with is a *misdemeanor*.

The third law that sounds like it should apply, Tampering with a Witness in the Fourth Degree, is also severely limited. Under this statute, it is necessary for an “action or proceeding” to have been initiated before the tampering could have occurred. In other words, if a person who witnessed a crime is coerced into not testi-

fyng, but the authorities have not yet become involved in the case, prosecutors would be unable to charge this person under state law. Because of the way the law is worded, someone could effectively prevent the prosecution of a crime without fear of being held responsible for this interference. The requirement that an investigation must have already commenced in order for witness tampering to have occurred is aberrational from the rules regarding evidence tampering, which prohibit tampering with physical evidence in either a current or *prospective* investigation. Troublingly, this discrepancy in wording between the two statutes provides an inanimate object with more protection than a person.

These statutory shortcomings play out in very real and dangerous ways in communities plagued by gangs and domestic violence.

POLICY AND PROCEDURAL CHANGES ARE NEEDED

Raise Penalties for Witness Tampering and Intimidation

When witness intimidation is allowed to flourish, the harmful effects are clear. In New York State, 14 witnesses were murdered between 2000 and 2007; 19 witnesses in New York City were murdered between 1980 and 2007.¹⁸ Certainly many others have been threatened with a similar fate and have either not reported it or have declined to testify as a result of threats.

Under current New York law, both witness tampering and witness intimidation are at a maximum E felonies if no physical injury results to the victim.¹⁹ And, of course, witness intimidation can be all too effective with just the threat of physical injury. The widely acknowledged occurrences of violent retribution against witnesses make it clear to prospective witnesses that a threat certainly can

lead to violence, even if they don't know for certain that it will.

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 or misdemeanor tampering or intimidating charge, which could result in less than one year in prison, in order to avoid being convicted of a more serious charge such as Murder in the First Degree, an A-I felony, which carries a term of life in prison.

Paradoxically, 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 Victim and Witness Intimidation.²⁰ New York should raise its penalties for both Witness Tampering and Victim and Witness Intimidation in order to take these perverse incentives away from violent, dangerous defendants.

Encourage Communities to Fight Back Against

Witness Intimidation

When witnesses are afraid to step forward and report crimes, it enables criminals to continue their unlawful acts. Especially in communities where gangs are prevalent and access to support services is scant, residents often fear retribution or stigmatization if they come forward. The code of silence is so pervasive that even the victims of gang crimes are reluctant to cooperate with law enforcement. 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, includ-

ing public forums and an education campaign featuring signs on buses and billboards.²¹

Funding domestic violence outreach and support services will also help empower victims to escape abuse. As many victims of domestic violence live with their abusers, coming forward against their abuser can mean losing a home and financial support. Organizations such as Safe Horizons operate both emergency shelters for crisis situations and longer-term housing, where women can live for several months. Safe Horizons offers comprehensive services including counseling, housing assistance, life skills and parenting courses, childcare, and medical aid.²² Moreover, it helps victims to leave their abusers permanently through its Job Readiness Program, which provides practical assistance to help women in its shelters find employment.

Approaching the problem of witness and victim intimidation through community outreach and legislation will reinforce the success of both initiatives and will more comprehensively protect witnesses and victims, particularly in gang and domestic violence-related crimes.

SUMMARY

Witness intimidation and a pervasive code of silence erode the basic rights of victims and irrevocably harm our communities. Yet while there are many societal influences that discourage crime victims and witnesses from coming forward, there are few tools available to build bridges to witnesses and victims and to punish those who tamper with their basic right both to be served by the criminal justice system and to be protected by law enforcement. Increasing the penalties for witness intimidation and tampering, as

well as strengthening the language of these statutes, will provide witnesses and victims with the protection that they deserve. It can also provide critical steps toward ensuring that they are not further victimized by offenders who think that they can use intimidation and threats to sidestep the law.

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