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LEGISLATIVE PRIORITIES

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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 District Attorneys Association of the State of New York, 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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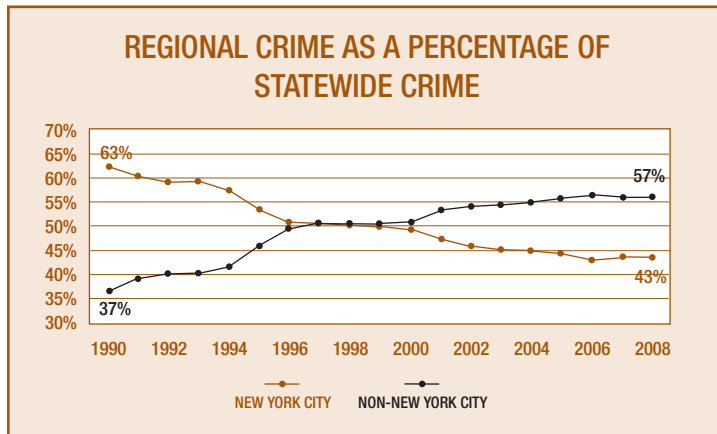
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## 2. PROVIDE TOOLS TO INVESTIGATE, CHARGE, AND PROSECUTE GANGS AND PROTECT WITNESSES

Gangs and the violent crimes, drug crimes, and quality of life crimes that typically surround gangs are not confined to New York City. On the contrary, while the city has experienced record setting crime reduction, other parts of New York are contending with fairly static violent crime rates. According to the Division of Criminal Justice Statistics 2008 crime report “Not all areas of the State have benefited equally from the historic reduction in crime. The decline in Index crime<sup>1</sup> in New York City was much larger than that experienced in counties outside of New York City.”<sup>2</sup> Indeed, data shows how the burden is shifting: “The counties outside New York City now account for 57% of the reported crime statewide, as compared to 37% in 1990.”<sup>3</sup>



The experiences of Operation IMPACT communities provide evidence that part of this trend is a result of gang operations

outside of New York City. Project IMPACT provides direct support to the 17 counties upstate and on Long Island that account for 80 percent of the crime in the state outside of New York City.

In 2008, the city of Poughkeepsie in Dutchess County apprehended five key members of a violent gang associated with the Cripps. The gang had committed larcenies, burglaries, assaults, and robberies. In addition, more than a dozen firearms, a bullet-proof vest, narcotics, stolen property, and gang paraphernalia were recovered.<sup>4</sup>

Suffolk County has also suffered a plague of gang violence. In one investigation, more than 30 guns were uncovered. An additional ten guns, including a loaded, sawed-off 12-gauge shotgun and a loaded .357 caliber revolver that was used in murders, were found in the possession of a known member of the Salvadorian street gang MS-13.<sup>5</sup>

**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

Source: U.S. Dep't of Just. Office of Justice Programs, "Office of Juvenile Justice and Delinquency Prevention Fact Sheet" (April 2009), available at <http://www.ojjdp.com/nycg/publications/2007-survey-highlights.pdf>.

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 safehouses.<sup>6</sup> Not only are gangs known to recruit among vulnerable youths and contribute heavily to drug and gun crime, but they also terrify communities and escalate violence in a costly and senseless manner.

### **Gangs Contribute to Gun, Drug, and Violent Crime**

Guns are inextricably linked to gang culture. According to FBI data, a firearm is the murder weapon in 94 percent of gang killings, compared to 68 percent for all murders.<sup>7</sup> A nationwide survey of juvenile arrestees revealed that 31 percent of gang members surveyed reported carrying guns all or most of the time.<sup>8</sup> This creates an unfortunate cycle of violence. One study found that people who carried guns were 4.5 times as likely to be shot and 4.2 times as likely to get killed compared with unarmed people.<sup>9</sup>

Gang culture also condones the criminal use of guns. 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>10</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>11</sup>

Drug activities associated with gangs are also pervasive. According to the 2008 National Gang Threat Assessment, 58 percent of law enforcement agencies reported gang involvement in the street sales of drugs.<sup>12</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>13</sup>

## **ENABLE IMPROVED ENFORCEMENT**

### **Define “Gang” in the Penal Law**

Thirty-seven states plus the District of Columbia have already defined “gang” in the law. New York has yet to do so, although a sound definition of “gang” would help to effectively combat gang violence and to ensure 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 aid in prevention efforts, helping policymakers to identify and address the factors that are causing individuals to join gangs in the first place.

### **Enhance Penalties for Gang-Related Crimes**

Crime and gangs work in concert to create an atmosphere of fear, intimidation, and dependence above and beyond that of crime alone. In 2000, New York passed legislation imposing addi-

tional 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>14</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 twenty-six other states.<sup>15</sup>

## **PROTECT WITNESSES**

### **Raise Penalties for Witness Tampering and Intimidation**

When witness intimidation is allowed to flourish, the harmful effects are clear. In New York State, fourteen witnesses were murdered between 2000 and 2007, and nineteen witnesses in New York City were murdered between 1980 and 2007.<sup>16</sup> 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 such threats.

Under current New York law, both witness tampering and witness intimidation are only E felonies if no physical injury results to the victim.<sup>17,18</sup> 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, 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 intimidation.<sup>19</sup> 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**

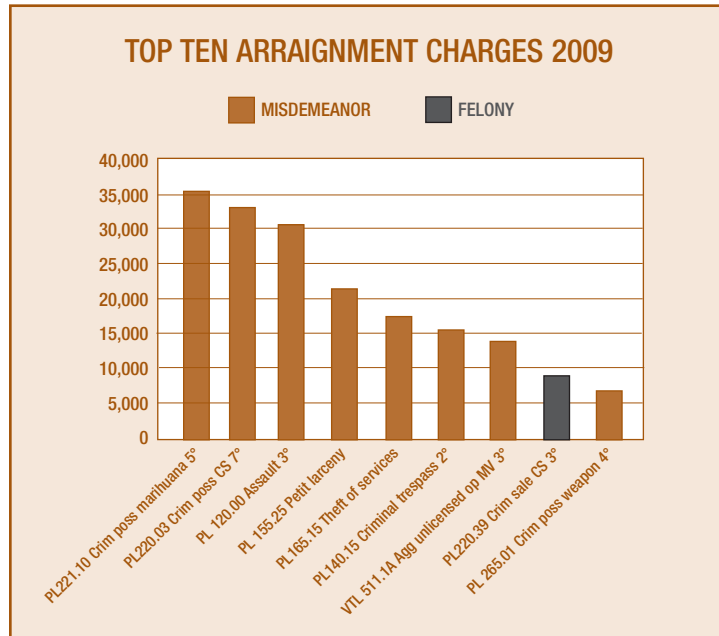
When witnesses are afraid to step forward and report crimes, it enables criminals to continue their unlawful acts. Especially in communities where gangs are prevalent, residents often fear retribution or stigmatization if they come forward. The code of silence is so pervasive that even the victims of 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, including public forums and an education campaign featuring signs on buses and billboards.<sup>20</sup>

### **Make Gangs Less Profitable and Pervasive by Punishing Serious Repeat Misdemeanants**

Gangs are often money-making ventures that sell drugs or engage in other organized criminal activity for profit. In order to steer clear of serious jail time, career criminals -- both gang members and others -- deliberately and repeatedly calibrate their illegal behavior to stop just short of felony-level wrongdoing. This type of

criminal knows, for example, that if he is caught shoplifting merchandise valued at less than \$1,000, the resulting charge is only the class A misdemeanor of Petit Larceny rather than the more serious Grand Larceny in the Fourth Degree, a class E felony.

The gang lifestyle is entrenched in quality-of-life crimes. Not only are gang members' rap sheets full of Petit Larceny, Criminal Possession of Stolen Property, and Trademark Counterfeiting, other misdemeanors common to career offenders include Criminal Possession of a Controlled Substance, Criminal Sale of Marijuana, and Criminal Trespass.<sup>21</sup>



Source: Criminal Court of the City Of New York 2008 Annual Report (Aug. 2009) available at [www.nycourts.gov/courts/nyc/criminal/index.shtml](http://www.nycourts.gov/courts/nyc/criminal/index.shtml).

A **felony** is a criminal offense punishable by a prison term that can exceed one year and is served at a state facility.

A **misdemeanor** is a lesser criminal offense punishable by a term of not more than one year. Inmates sentenced to less than one year serve out their term in city jails.

Although New York's sentencing provisions enhance penalties for second *felony* offenders and persistent *felons*, career *misdemeanants* know that most *misdemeanor* offenses are not enhanced in any analogous way whether it is their second -- or twenty-second -- conviction.

### At What Cost?

Habitual misdemeanants place an avoidable financial burden on society. The cost of maintaining a prisoner in a local jail exceeds the cost of maintaining a prisoner in state prison. It costs about \$88.77 per day, or \$32,400 per year, in 2005 to maintain a prisoner in the New York State Department of Correctional Services.<sup>22</sup> The estimated daily cost for a prisoner in the New York City jail system was almost twice as high at \$164.11 (\$59,900 per year) in 2005,<sup>23</sup> and the average estimated daily cost for county jails outside New York City was \$105 (\$38,325 per year).<sup>24</sup> Aside from jail costs, repeat misdemeanants tax valuable human resources by overloading court dockets and distracting police, prosecutors, and public defenders from investigating and trying other cases.

## SUMMARY

Gang culture is constantly evolving. Once considered a problem of inner cities, gangs have expanded into suburban and even rural areas. Although the nature of gangs in different parts of the state is not uniform, the violence, harassment, and intimidation that they inflict on communities is the same. New York needs to enact legislation that defines gang, creates aggravated penalties for gang violence, protects witnesses from intimidation and physical harm, and creates penalties that deter and punish chronic offenders.

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1. Index crimes are murder, rape, robbery, aggravated assault, burglary, larceny and motor vehicle theft.

2. Div. of Crim. Just. Serv., *Crime in New York State: 2008 Final Data (Summer 2009)*, available at <http://criminaljustice.state.ny.us/pio/annualreport/crimeupdate2008.pdf>. Index crimes are murder, rape, robbery, aggravated assault, burglary, larceny and motor vehicle theft.

3. *Ibid.*

4. N.Y. Div. of Crim. Just. Services, *2008 Operation Impact Annual Report (2009)*, available at <http://criminaljustice.state.ny.us/crimnet/ojsa/impact/2008annualreport.pdf>.

5. *Ibid.*

6. John Doherty, "Big-Time National Gangs Hooking up with Local Crews," *Albany Times Herald-Record* (June 17, 2007), available at [www.recordonline.com/apps/pbcs.dll/article?AID=/20070617/NEWS/706170331](http://www.recordonline.com/apps/pbcs.dll/article?AID=/20070617/NEWS/706170331).

7. U.S. Dep't of Just., "2006 Crime in the United States" tbl. 10 (2007), available at [www.fbi.gov/ucr/cius2006/offenses/expanded\\_information/data/shrtable\\_10.html](http://www.fbi.gov/ucr/cius2006/offenses/expanded_information/data/shrtable_10.html).

8. Scott H. Decker et al., "Illegal Firearms: Access and Use By Arrestees," *Nat'l Inst. Of Just. Research in Brief* (Jan. 1997), available at <http://www.ncjrs.gov/pdffiles/163496.pdf>.

9. Charles C. Branas et al., "Investigating the Link Between Gun Possession and Gun Assault," *American Journal of Public Health* DOI: 10.2105/AJPH.2008.143099 (Nov. 2009).

10. Decker, et al., *supra* note 6.

11. *Ibid.*

12. National Gang Intelligence Center, *National Gang Threat Assessment 2009 (2009)*, available at <http://www.fbi.gov/publications/ngta2009.pdf>.

13. Terence P. Thornberry et al., *Gangs and Delinquency in Development Perspective (2003)*, cited in James C. Howell, *The Impact of Gangs on Communities*, *Nat'l Youth Gang Ctr. Bulletin*, Office of Juvenile Justice and Delinquency Prevention, (Aug. 2006).

14. N.Y. Penal Law § 485.00.

15. Alaska, Arizona, Arkansas, California, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Louisiana, Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, South Dakota, Tennessee, Texas, Utah, Virginia, Washington.

16. Senator John L. Sampson, "Memorandum of 2007 N.Y. Senate Bill 2493," (2007) (creating witness protection program).

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).

18. N.Y. Penal Law §§ 215.11, 215.15.

19. N.Y. Penal Law § 215.00.

20. Leah George, "You Bet I Told' Campaign Underway," *YNN News* (Jan. 5, 2008), available at [www.rnews.com/print.cfm?id=57057](http://www.rnews.com/print.cfm?id=57057).

21. N.Y. Penal Law §§ 165.40, 220.03, 165.71, 240.37, 221.15, 221.40, 140.15.

22. Corr. Ass'n of N.Y., "Basic Prison & Jail Fact Sheet" (Mar. 2006), available at [www.correctionalassociation.org/publications/download/ppv/factsheets/basic\\_prison\\_fact\\_2006.pdf](http://www.correctionalassociation.org/publications/download/ppv/factsheets/basic_prison_fact_2006.pdf).

23. *Ibid.*

24. Adrian Bongiorno, "The State of Our County Jails," *NYSAC News (N.Y. St. Ass'n of Counties)* (2006), available at [www.nysac.org/Communications\\_and\\_Publications/documents/NYSACNewsforWeb.pdf](http://www.nysac.org/Communications_and_Publications/documents/NYSACNewsforWeb.pdf).