

Statement of Shari C. Hyman
Office of the Criminal Justice Coordinator
New York City Council
Committee on Public Safety
January 28, 2010

Good morning, Chairman Vallone and members of the Committee on Public Safety. My name is Shari Hyman and I am Deputy Criminal Justice Coordinator. Thank you for the opportunity today to express the Administration's support for the proposed legislation related to criminal street gang initiation activity.

Since day one, the Bloomberg Administration has been committed to combating criminal street gangs and gang-related violence. One of the most recent and promising initiatives that the Mayor has committed to doing is a pilot project to work with prosecutors and courts to use GPS technology in appropriate cases as a bail or sentence condition to keep gang members away from other gang members and gang-affiliated locations. By preventing known gang members from affiliating with other members and locales, we hope to break the bonds of gang membership and thereby decrease the pernicious hold criminal street gangs have on our communities.

The proposed legislation on today's agenda is another promising step forward in the fight against criminal street gangs and gang-related violence. As Susan Petito, Assistant Commissioner for Intergovernmental Affairs for the New York City Police Department testified at the December 3rd hearing on this topic, the Administration is pleased to have worked with the Council on this bill and we again commend the Council for seeking to strengthen the law to curtail the violent and dangerous activities conducted by criminal street gangs. This legislation provides another tool to law enforcement by enhancing punishment for hazing and menacing that occurs in the context of gang initiation activities. Under this new law, conduct that is currently only a violation or a B misdemeanor in the Penal Law will be elevated to an A misdemeanor. This means that individuals who currently face only 15 days or three months in jail will now face a sentence of up to one year. Imposing these new penalties for this conduct sends a strong message that criminal street gangs and gang-related violence absolutely will not be tolerated in our City.

Thank you again for the opportunity to express our support for this bill and for your continued commitment to this issue.

TESTIMONY

The Council of the City of New York

Committee on Public Safety
Peter F. Vallone, Jr., Chair

“Preconsidered Int. - A Local Law to amend the administrative code of the city of New York, in relation to Criminal Street gang initiation activity.”

January 28, 2010
New York, New York

Submitted by
The Legal Aid Society
Juvenile Rights Practice &
Criminal Practice
199 Water Street
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Good morning. I am Nancy Ginsburg, director of the Legal Aid Society's Adolescent Intervention and Diversion Project in the Criminal Practice, a specialized unit dedicated to the representation of adolescents aged 13 to 18 who are prosecuted in the adult criminal courts. I submit this testimony on behalf of the Legal Aid Society, and thank Chairman Vallone and the Committee on Public Safety for inviting our thoughts on the proposed bill addressing gang initiation. We appreciate the Council's interest in reducing gang activity on the streets of New York City. We look forward to working with the Committee and the Council to create effective solutions to street violence.

The Legal Aid Society is the nation's largest and oldest provider of legal services to poor families and individuals. Legal Aid's Juvenile Rights Practice provides comprehensive representation as attorneys for children who appear before the New York City Family Court in abuse, neglect, juvenile delinquency, and other proceedings affecting children's rights and welfare. Last year, our staff represented more than 30,000 children, including approximately 4000 who were charged in Family Court with juvenile delinquency. The Society's Criminal Practice represented clients in some 232,000 cases last year. Our perspective comes from our daily contacts with children and their families, and also from our frequent interactions with the courts, social service providers, City agencies including the New York Police Department, Department of Education, Department of Juvenile Justice, Department of Probation Department of Correction and the Administration for Children's Services. In addition to representing many thousands of children each year in trial and appellate courts, we also pursue impact litigation and other law reform initiatives on behalf of our clients.

Since we were here, six weeks ago, to discuss gang issues and street violence in New York City, we have learned many things about a number of very successful programs used around the country to approach this very issue. These programs, which have been studied and assessed by reputable academic institutions, such as Harvard and Northwestern Universities, have been shown to bring about significant decreases in street violence caused by gangs. It is important to note that the most successful of these programs do not approach the problem being addressed today as solely a "gang" issue. The nomenclature used by these programs and the academics is "street violence" which is more reflective of the reality on the streets. As we heard in this room in December, and the research supports, much of the violence in our streets cannot be attributed to established, known "gangs", but rather stem from geographic designations, or "turf wars" and any number of personal disagreements among groups of people. This makes the violence no less scary, but harder to approach with traditional law enforcement methods.

Last month's hearing motivated me to investigate in more depth the methods that other jurisdictions use to approach what I am going to refer to as the problem of "street violence" which includes established gangs and looser group affiliations engaging in criminal conduct. Almost all of the programs implemented elsewhere, and most interestingly, *on the verge of being implemented in New York City*, do not rely on criminal suppression as the primary tool.. There seems to have been a recognition of what the research has demonstrated again and again: traditional criminal justice deterrence methods do not effectively reach street gangs.

In 1998, a United States Department of Justice publication noted that:

Criminal justice has sought to generate deterrence in a variety of ways: police agencies through patrol and rapid response, probation and parole agencies through supervision, prosecutors and judges by focusing attention and sanctions on repeat and violent offenders...The main engine for creating deterrence, however, has been the basic case-processing mechanisms of the criminal justice process: the apprehension, prosecution, and sanctioning of offenders. In this model deterrence is generated by the threat that an offender will face a formal penalty for the crime he has committed. We calculate--and presume that offenders calculate--this threat on the basis of the expected costs, imposed by the criminal justice process, on offenders for the crimes that they commit. Unfortunately, both scholarship and everyday experience suggest that the deterrent power of this strategy has not been great...*And while research has repeatedly suggested that the certainty and swiftness of sanctions matters more than their severity, most of the political and policy debate has centered on increasing sanctions. Debates center on the death penalty and three-strike laws, not on clearance rates for violent crimes or the workloads of prosecutors and judges*". (emphasis added) ¹

In light of this recognition, a number of programs have been developed and implemented in large and small jurisdictions--Boston, Chicago, High Point North Carolina, Cincinnati, Baltimore, and Los Angeles, among others. Some programs use the name Ceasefire, some do not. Some have a large law enforcement component. Others rely primarily on street and community outreach. All of these programs recognize that street violence cannot be addressed with traditional law enforcement methods, alone. The jurisdictions which have implemented these methods have seen significant decreases in street violence attributed to gangs or group violence. In 1997, the International Association of Chiefs of Police issued a report recognizing that "[r]esearch shows significant overlap between youth at risk of being perpetrators, and those who become victims of gun violence. Broad-based partnerships with the public health,

¹ Kennedy, D., "Pulling Levers: Getting Deterrence Right", National Institute of Justice Journal, pp.3-4, July, 1998.

medical, faith, education, community groups, social service community and philanthropic sectors should work to establish gun violence prevention programs in a wide range of settings where young people gather....Community partnerships are the key to many aspects of successful policing. These partnerships foster a greater understanding of the roles that community members and law enforcement each play in preventing and solving crime."²

The outreach programs reach out to "gangs" or "groups" and focus on some or all of the following components: articulating powerful community norms (from elders, ex-offenders, mothers of murdered children, etc.) against violence; offering a specific social service structure for those who want help getting out of the gangs; creating a strong public education campaign to instill in people the message that shootings and violence are not acceptable; strengthening communities to build capacity to exercise informal social control and respond to issues that affect them; putting gangs on prior notice that serious violence by any gang member will result in law enforcement attention to all members of his gang; reliance on trained outreach workers, faith leaders, and other community leaders to intervene in conflicts, or potential conflicts, and promoting alternatives to violence.³

We recently learned that New York City *is* exploring some of these initiatives. Last spring, the New York State Senate allocated \$1.5 million to Manhattan, Brooklyn, and Queens to implement SNUG⁴, modeled on Chicago's CeaseFire program, which takes a public health approach to reducing shootings and killings. SNUG is also funded in Yonkers and Mt. Vernon, though not the

² "Taking a Stand: Reducing Gun Violence in Our Communities", A Report from the International Association of Chiefs of Police 2007 Great Lakes Summit on Gun Violence.

³ See, www.nnscommunities.org; www.ceasefirechicago.org.

⁴ S: Street intervention and stopping the violence; N: National, state and local funding support; U: Use of celebrities and centers; G: Gangs, guns, gainful employment.

Bronx.⁵ In September of 2009, the Center for Court Innovation received nearly \$1 million in stimulus funds from the Department of Justice to implement the Chicago model of CeaseFire as a demonstration project at their Crown Heights Mediation Center. John Jay College houses the National Network for Safe Communities which focuses on this very issue of gang and street violence.

These innovative programs are being funded at the same time that Mayor Bloomberg announced the merger of the city's Department of Juvenile Justice into its child welfare agency, signaling a more therapeutic approach toward juvenile delinquency. The mayor, himself, recognized in his recent State of the City address that we need to make greater efforts to incarcerate fewer youth and provide therapeutic services to children in need who come through the court system:

We found that many juveniles who are sentenced to intensive in-home counseling or other alternative programs – instead of far more costly upstate facilities that we don't control and that everyone recognizes are dangerously dysfunctional – have fewer run-ins with the law.

Compare that to this fact: Three of every four who get sent to those out-of-city facilities get re-arrested within three years, often for even more serious crimes. Three out of every four! If that's not a broken system, I don't know what is.

In 2010, we'll conduct a major overhaul of the juvenile justice system with new strategies, new goals, and new measurements for success. We'll start by merging two agencies that serve overlapping populations: Our Department of Juvenile Justice – which has the capacity to detain young people and our Administration for Children Services – which has the capacity to provide intensive support services.

⁵[http://63.118.56.3/pressreleases.nsf/\(\\$all\)/9DBBCD9919C4A8D9852575A700610D2C/\\$file/SENATE%20LAUNCHES%20NEW%20INITIATIVE%20TO%20CUT%20ILLEGAL%20GUNS.pdf?OpenElement](http://63.118.56.3/pressreleases.nsf/($all)/9DBBCD9919C4A8D9852575A700610D2C/$file/SENATE%20LAUNCHES%20NEW%20INITIATIVE%20TO%20CUT%20ILLEGAL%20GUNS.pdf?OpenElement)

By merging the two, and by employing risk-based strategies, we can make our city safer by providing services for those who should be detained and providing stronger supervision for those who may be at risk of being sent upstate and who can be safely maintained in the community.⁶

At a time when funding is being allocated to innovative crime-fighting and violence prevention programs throughout the City and State, and the City has stated its commitment to maintaining more court-involved youth in the community with services, it seems inconsistent to propose legislation with the goal of increasing the number of youth prosecuted and enhancing the sentencing penalties they will face. You heard from the prosecutors of four of the City's five boroughs testify in December about the difficulties they would face in proving the cases brought pursuant to the proposed gang initiation bill. They described the difficulties they currently have in securing the cooperation of witnesses in the prosecution of serious felonies related to gang violence. Such problems increase with lower level offenses similar to the proposed bill.

The Brooklyn District Attorney's office described its commitment to alternative to incarceration programs which help young people get out of the gangs and back into school or a job on the theory that if you turn a gang member into "a positive person in this society then we just have taken care of a whole bunch of crimes that are never going to happen....What we've learned is that there has to be a very strong relationship between our program and communities. If we can get them to leave the gang, we can get them to go back to school but there comes a

⁶http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=http%3A%2F%2Fwww.nyc.gov%2Fhtml%2Fom%2Fhtml%2F2010a%2Fpr029-10.html&cc=unused1978&rc=1194&ndi=1

point where they graduate our program. I want to make sure they have a community to go back to that's going to support them and give them that support system that they need."⁷ Each prosecutor asserted his or her belief that the current penal law contains enough provisions to prosecute individuals involved in gang/street violence.

We, both prosecutors and defense attorneys, have watched more and more young people pushed into the court system in New York City. Almost all these youth are minorities. Almost all are functioning academically far below grade level. Almost all live in neighborhoods where positive life choices and role models are few. Many join gangs because it is easier than fighting them, day in and day out. Clearly, there are New Yorkers who believe that a new approach must be implemented. New programs to address street violence will begin this year in New York City.

We have previously set forth our concerns to this bill. It is our strong belief that enforcement of this law will fall primarily on minority youth. We ask that you seriously consider those concerns, in addition to the prior testimony of law enforcement, advocates and community members, much of which supported the issues we raised, along with their own concerns about the bill. We ask the City Council to join the academics who have studied this issue for over a decade, the U.S. Department of Justice which endorses their findings, and the jurisdictions which have implemented the methods stemming from the research which have led to

⁷ Testimony of Diana Rodriguez, Assistant District Attorney, Kings County, Transcript of City Council Hearing, Committee on Public Safety, December 3, 2009, pp. 67-8.

significant decreases in street violence. Deterrence through legislation has its limits.

Everyone spoke about constituents asking for help to keep their kids out of gangs. Passage of this bill will be no more effective or comforting to those parents than any of the current laws.

The courts can only do so much. You cannot look to the court system to solve endemic social problems on the street. You must go to the streets to solve those problems. The New York State legislature has recognized that. The Center for Court Innovation has recognized it. Now, we should all recognize it and begin an inclusive process to examine the issue of street violence and address it in a way that will truly reduce the brutality in our neighborhoods.

New York City needs to address the negative effects of gang membership through intensive outreach and education, the provision of community-based services and after-school activities to provide viable alternatives to our young people, not through the enactment of additional criminal statutes. The conditions that make gangs attractive should be attacked with the kind of investment in our young people that, in the long run, will bring a safer, more secure City for all of us.

Thank you for the opportunity to speak about this important issue.

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THE CITY OF NEW YORK**

Appearance Card

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Date: 1-28-10

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THE CITY OF NEW YORK**

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Date: _____

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Name: Shari Hyman

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I represent: CJC

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THE CITY OF NEW YORK**

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