



**BROOKLYN
DEFENDER
SERVICES**

TESTIMONY OF:

Yung-Mi Lee – Supervising Attorney, Criminal Defense Practice

Presented before:

The New York City Council Committee on Public Safety Hearing on

**Ints. 0567-2018, 0635-2018, 1244-2018, 1553-2019, 1548-2019, & T2018-2223, & Res.
0866-2019**

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My name is Yung-Mi Lee and I am a Supervising Attorney in the Criminal Defense Practice at Brooklyn Defender Services (BDS). BDS provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for over 30,000 clients in Brooklyn every year. I thank Chairperson Donovan Richards and members of the Committee on Public Safety for holding this hearing on consequential legislation about which we have very serious concerns.

BDS Opposes T2018-2223 – A Local Law to amend the administrative code of the city of New York, in relation to providing notice to minors included in the criminal groups database

BDS urges the Council not to advance this legislation and meet with advocates and experts working on so-called gang enforcement, including people who have been swept up in raids, public defenders, academics, community members, and others.

On June 13, 2018, my colleague Rebecca Kinsella testified before this Committee on the New York Police Department's (NYPD) so-called gang takedown efforts. In that testimony, BDS called for the abolition of the NYPD's gang database, or "criminal group database," which is only the latest form of profile-based policing, or what many call Stop & Frisk 2.0. We also called for a reallocation of resources to fund Cure Violence programs and, more generally, to support rather than profile marginalized families and communities. Instead, T2018-2223, which appears to be well-intended, would entrench gang designations in the law and create an extremely limited and possibly ineffectual process for New Yorkers to determine whether they have been included in this database and, only then, petition to the NYPD to be removed, subject to the complete discretion of the Department which originally included them.

Extremely Limited “Gang Label” Notification Provision

It is possible that, under this legislation, the NYPD would have no greater obligation toward transparency that exists in the status quo. The legislation would require the NYPD to notify New Yorkers who are 17 and under whom they have entered into the gang database “unless providing such notification would compromise an active criminal investigation or the department has specific reason to believe that providing such notification would compromise the health or safety of the minor or another person.” This language is similar to language the NYPD already uses in rejecting FOIL requests regarding placements in the database and the legislation provides for no new avenue to challenge a denial.

Extremely Limited Mechanism to Contest the “Gang Label”

This legislation allows only those who are 17 and under *and* who have received the aforementioned notice from the NYPD to then contest their gang designation. The NYPD would then have complete discretion to reject the petition, with no evidentiary standard. This provision would create a more narrowly available mechanism of relief than what currently exists under the law, namely filing an Article 78 challenge, which New Yorkers of any age may pursue. There are significant obstacles to successfully challenging one’s gang designation, but they are not overcome by this legislation.

Codifying the Racialized Gang Label

There is currently no definition of a gang in the law. Any definition would very likely be overbroad and discriminatory in its impact, as the term itself is racialized and counter-productive. This legislation would define gangs as “formal or informal” groups of three or more people who commit a crime and, for example, follow the same clothing trends. Given the expansiveness of our criminal legal system, this definition could include nearly anybody, but we know that predominately Black and Latinx people would be targeted, particularly if this definition is later used in sentencing enhancement legislation or additions to the penal law.

The Bigger Picture

Kraig Lewis was living in Connecticut, nine credits away from his MBA. Then he and 119 others were swept up in what law enforcement hailed as the largest gang takedown in New York City history. But he was not actually part of a gang—just one of many fallacies since exposed. Kraig’s story was featured in an April 2019 article and an accompanying documentary in *The Intercept*, which were released on the same day CUNY School of Law Professor Babe Howell and doctoral student Priscilla Bustamante published a report on the Bronx 120 raid.^{1,2} The article also featured Nicholas Bailey, who had been arrested on robbery charges just after turning 18. The judge in his case gave him a second chance—a diversion program with no jail time—and sealed his case. He thrived for 5 years until federal law enforcement used this sealed case as a predicate to include him in the Bronx 120 raid and prosecution. Then he was sentenced to 6 years in prison. (This raid was conducted jointly by federal agencies, including Immigration and Customs Enforcement (ICE), and local and state law enforcement.) In both of these cases, and in countless others, young New Yorkers were

¹ Alice Speri, *The Largest Gang Raid In NYC History Swept Up Dozens Of Young People Who Weren’t In Gangs*, *The Intercept*, Apr. 25, 2019, available at <https://theintercept.com/2019/04/25/bronx-120-report-mass-gang-prosecution-rico/>.

² Professor Babe Howell & Priscilla Bustamante, Report on the Bronx 120 Mass “Gang” Prosecution (CUNY School of Law 2019), available at <https://bronx120.report/>.

coerced to plead guilty to felonies, erecting lifelong barriers that will continue to haunt them and their families and communities.

In a press release, federal prosecutors highlighted several murders they linked to the alleged gang members. But, in reality, more than half of the 120 were charged with federal conspiracy based solely on drug offenses—mostly for selling marijuana. Only six were charged in connection with the murders. Also, three people had already been convicted in state court for those murders, one of whom was re-prosecuted in the federal conspiracy case, apparently to give more weight to the broader conspiracy case. In fact, more than half of the people swept up in the "gang raid" were not even alleged by prosecutors to be gang members.

Prior research has found gang allegations nearly exclusively impact Black and Latinx people. Nearly 66% of those added to the NYPD's gang database between Dec. 2013 and Feb. 2018 were Black and 33% were Latinx.³ This legislation would require annual reporting of this data. Yet important questions would remain, including: How does one get entered into the database? How does one get out? Do federal agencies, including ICE, have access to this database? Who else is granted access? Most importantly, is there any evidence of the efficacy of this approach? Gang databases engender mass surveillance, extremely harsh treatment in the criminal legal system, and ultimately increased marginalization, which do not improve public safety.

As one resident quoted in *The Intercept's* article notes, his community was not the war zone described by law enforcement. Yet violence does occur. That is why communities across the city are developing their own solutions, like Cure Violence programs. That is why New York City must abolish its gang database.

BDS Opposes Int. No. 1244-2018 - A Local Law to amend the administrative code of the city of New York, in relation to prohibiting certain unsolicited disclosures of intimate images

Certainly, it is inappropriate to 'Airdrop' or otherwise send unsolicited intimate images. However, it is our position that the criminalization of this act is more likely to ensnare young people than it is to deter this type of behavior. For those who engage in this behavior, sending Airdrop images may be akin to a prank phone call. For those who receive them, it can be annoying and upsetting, but not so pernicious such that it should be criminalized. Adding this crime will likely lead to racially disparate enforcement and a series of devastating consequences. At a time when we are working towards eliminating minor criminal charges and closing Rikers Island, the New York City Council should not be looking to add or increase criminal charges. We have learned that creating crimes does not deter behavior and instead destabilizes people's lives, families and communities. In the alternative, we suggest that the City Council invest in an education campaign to teach people how to change their privacy settings to prevent the receipt of unsolicited images.

³ Alice Sperti, *New York Gang Database Expanded By 70 Percent Under Mayor Bill De Blasio*, *The Intercept*, June 11, 2018, available at <https://theintercept.com/2018/06/11/new-york-gang-database-expanded-by-70-percent-under-mayor-bill-de-blasio/>.

BDS Opposes Int. No. 1553-2019 - A Local Law to amend the administrative code of the city of New York, in relation to prohibiting unfinished frames or receivers

The mere possession of a “piece” of a firearm, such as the receiver of a firearm, is not currently illegal because it is not an “operable” weapon. New York State law is clear that a firearm is not a weapon unless it is operable. This is why every prosecution for Criminal Possession of a Firearm includes an operability test and an operability report, when the firearm is collected. The receiver of a firearm cannot discharge a bullet without the addition of other parts of a firearm. This legislation seeks to prohibit possession of any individual part of a firearm, i.e. “any material that does not constitute the frame or receiver,” which would greatly expand the scope of the law in a manner that criminalizes what could be innocent behavior.

Int. No. 1553 would provide an avenue for the prosecution of New Yorkers in the arena of firearm possession even when what they possess cannot actually be used as such. New Yorkers who possess inoperable firearms, such as relics, antiques, or even broken pieces of firearms would be subject to arrest and prosecution. People are often unaware of the items contained in their basements, storage areas, or even closets, which have been used from one generation to the next.

Lastly, the legislation does not require any specific intent element, such that possession of the receiver or unfinished receiver must be done with the specific intent to produce or manufacture a “Ghost Gun” for it to be illegal. This legislation essentially prohibits and criminalizes the possession of metal. As such we are opposed to Int. No. 1553-2019. We are similarly opposed to the required reporting of police seizure of a “frame or receiver” or “unfinished frame or receiver” in Int. 1548-2019.

BDS Supports Int. 0635-2018 - A Local Law to amend the administrative code of the city of New York, in relation to prohibiting staged perp walks

There are many ways in which people who are arrested are publicly humiliated during the course of their criminal cases. Their names and faces are printed on the front pages of newspapers distributed across the country, often alongside dehumanizing and hateful headlines. Record sealing following the disposition of their cases cannot undo this harm, even if they are found to be fully innocent. BDS supports this legislation to prohibit staged perp walks, and commends its sponsor, Councilmember Dromm, though we note that its impact will be limited by the broader lack of accountability for police and prosecutors, which must change for this and other protections to be effective.

We thank the Council for the opportunity to speak on these issues and hope you will view BDS as a resource as we continue to work together.

If you have any question, please feel free to reach out to Jared Chausow at jchausow@bds.org.