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**STATEMENT SUBMITTED BY  
CHARLES H. ROGOVIN, VICE CHAIRMAN  
PENNSYLVANIA CRIME COMMISSION**

**To The  
HOUSE JUDICIARY COMMITTEE**

**September 19, 1990  
Harrisburg, Pennsylvania**

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE. I APPRECIATE THE OPPORTUNITY TO EXPRESS THE PENNSYLVANIA CRIME COMMISSION'S VIEWS ON THE IMPORTANT ISSUES YOU ARE CURRENTLY CONSIDERING.

THE PENNSYLVANIA CORRUPT ORGANIZATIONS ACT<sup>1</sup> HAS NOW BEEN IN EFFECT FOR APPROXIMATELY SEVENTEEN YEARS. UNFORTUNATELY, REVIEW OF THE HISTORY OF PROSECUTIONS BROUGHT UNDER THIS STATUTE IS RATHER DIFFICULT. PRIOR TO THE INSTITUTION OF THE SENTENCING GUIDELINES AND THE ESTABLISHMENT OF A SYSTEM FOR GATHERING SENTENCING INFORMATION FOR ALL CONVICTIONS WITHIN THE COMMONWEALTH, IN 1985, THERE WAS NO CENTRAL RECORD-KEEPING SYSTEM FOR THE NUMBER AND TYPES OF PROSECUTIONS INITIATED AND CONVICTIONS SECURED UNDER THIS ACT. A REVIEW CONDUCTED BY THE COMMISSION, HOWEVER, SUGGESTS THAT THERE MAY HAVE BEEN NO MORE THAN A HALF-DOZEN ATTEMPTS TO CHARGE INDIVIDUALS WITH VIOLATIONS OF THE CORRUPT ORGANIZATIONS ACT BETWEEN 1973 AND 1980. THIS IS SUPPORTED BY THE FACT THAT THERE ARE NO REPORTED APPELLATE CASES DEALING WITH CRIMINAL PROSECUTIONS UNDER THIS STATUTE UNTIL 1982.

THE INITIAL RELUCTANCE TO USE THE CORRUPT ORGANIZATION STATUTE MAY, IN PART, BE EXPLAINED BY THE FACT THAT SOME OF THE MORE CRITICAL TOOLS NEEDED TO CONDUCT THESE INVESTIGATIONS, SUCH AS THE AVAILABILITY OF INVESTIGATING GRAND JURIES<sup>2</sup> TO EXAMINE INTER-COUNTY CRIMINAL ACTIVITIES AND ELECTRONIC SURVEILLANCE,<sup>3</sup>

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1. 18 P.S. SECTION 911, 1972, DECEMBER 6, P.L. 1482, NO. 334, SECTION 1, EFFECTIVE JUNE 6, 1973.

2. 42 P.S. SECTION 4541 ET.SEQ., 1980, OCTOBER 5, P.L. 693, NO. 142.

3. 18 P.S. SECTION 5701 ET.SEQ., 1978, OCTOBER 4, P.L. 831, NO. 164.

WERE NOT AVAILABLE UNTIL PASSAGE OF AUTHORIZING LEGISLATION IN THE LATE 1970s AND EARLY 1980s. NONETHELESS, TO DATE, THERE ARE ONLY A HANDFUL OF REPORTED APPELLATE CASES CHALLENGING CONVICTIONS. TO MOST LAWYERS, THIS WOULD BE A CLEAR INDICATION THAT THERE HAVE NOT BEEN MANY PROSECUTIONS FOR VIOLATION OF THE CORRUPT ORGANIZATIONS ACT.

THE FAILURE TO UTILIZE THAT STATUTE IN A PROGRAM TO CONTROL ORGANIZED OR ENTERPRISE CRIME MAY BE DUE TO A NUMBER OF FACTORS. ONE OF THE MOST SIGNIFICANT MAY BE THAT THE FEDERAL GOVERNMENT WAS FIRST TO MAKE A CONCERTED EFFORT TO ATTACK ORGANIZED CRIME ON A NATIONAL LEVEL. AS A CONSEQUENCE, MANY LOCAL AUTHORITIES DEFERRED TO OR REFERRED INFORMATION TO THE FEDERAL AUTHORITIES FOR PROSECUTION. ALSO, IN OUR COMMONWEALTH, LOCAL DISTRICT ATTORNEYS DISCHARGE MOST PROSECUTORIAL FUNCTIONS AND THEIR JURISDICTION IS LIMITED BY COUNTY BOUNDARIES. WITH LIMITED, LOCAL RESOURCES, AND A SUBSTANTIAL VOLUME OF STREET CRIME, ONLY A FEW OF THE LARGE COUNTY PROSECUTORS' OFFICES HAVE BEEN ABLE TO DEVOTE ANY EFFORTS TO THE PROACTIVE TYPE OF INVESTIGATIONS THAT ARE NEEDED TO DETECT AND PROSECUTE ORGANIZED CRIME. THE EXPANSION OF THE ATTORNEY GENERAL'S CRIMINAL JURISDICTION IN THE COMPLEX CRIME AREA ANTICIPATED A BROADER USE OF THE CORRUPT ORGANIZATIONS ACT. THE ABSENCE OF SIGNIFICANT CASES IN THIS AREA MAY BE A FUNCTION OF THE FAILURE TO DEVOTE SUFFICIENT RESOURCES TO THE PROBLEM OF ORGANIZED CRIME OR THE FAILURE TO MAKE CERTAIN IMPORTANT INSTITUTIONAL CHANGES IN THE WAY THE COMMONWEALTH ADDRESSES AND PURSUES ORGANIZED CRIME ACTIVITIES.

THE KINDS OF CHANGES REQUIRED HAVE PREVIOUSLY BEEN HIGHLIGHTED IN TESTIMONY BEFORE THIS COMMITTEE WHEN CHANGES IN STRATEGIES WERE RECOMMENDED AND SUBSTANTIAL INCREASES IN RESOURCES PROPOSED TO WAGE OUR CURRENT "WAR" ON DRUG TRAFFICKERS. YET, THE CRISIS THAT LAW ENFORCEMENT FACES IN DEALING WITH THE REGIONAL AND STATEWIDE DRUG NETWORKS HAS EXPOSED QUITE VIVIDLY THE INABILITY OF OUR CURRENT SYSTEM TO DEAL WITH ORGANIZED CRIME. THE RESPONSE OF THE LEGISLATURE TO DEVOTE MORE RESOURCES TO THE INVESTIGATION OF DRUG OFFENSES AND THE STRENGTHENING OF WIRETAP AND DRUG FORFEITURE STATUTES WILL CERTAINLY AID THE EVENTUAL PROSECUTION OF CRIMINAL DRUG ENTERPRISES. LAW ENFORCEMENT, AS A COMMUNITY, NOW APPRECIATES MORE CLEARLY THE NECESSITY FOR COOPERATION IN THE EXCHANGE OF INFORMATION AND INTELLIGENCE IN UNDERTAKING REGIONAL OR STATEWIDE APPROACHES TO DRUG CONSPIRACY INVESTIGATIONS. DIRE NECESSITY HAS BROUGHT ABOUT UNPRECEDENTED COOPERATION AMONG LAW ENFORCEMENT AGENCIES IN ADDRESSING A CRIMINAL PROBLEM OF MAJOR PROPORTION. THE CRIME COMMISSION HOPES THAT LESSONS LEARNED AND CHANGES MADE IN THE CONDUCT OF THE "WAR ON DRUGS" WILL BE APPLIED TO ALL ENTERPRISE CRIME.

THE COMMISSION CONTINUES TO BELIEVE THAT ONE OF THE MOST EFFECTIVE WEAPONS THAT CAN AND SHOULD BE ADDED TO OUR STATUTORY ARSENAL IS A SET OF CRIMINAL AND CIVIL FORFEITURE PROVISIONS. SENDING AN INDIVIDUAL TO JAIL MAY TEMPORARILY DISRUPT AN ORGANIZATION BUT RARELY, IF EVER, DISCOURAGES OTHER PERSONS FROM SEEKING TO REPLACE HIM IN THAT ORGANIZATION. FOR MANY A CAREER CRIMINAL, GOING TO JAIL MAY SIMPLY BE A COST OF BUSINESS WHICH ONLY MINIMALLY REDUCES HIS PROFITS IF A DEFENDANT IS ALLOWED TO

KEEP ILL-GOTTEN GAINS. FORFEITURE STATUTES PROVIDE A MEANS THROUGH WHICH MEMBERS OF A CRIMINAL ORGANIZATION CAN BE STRIPPED OF ILLEGALLY OBTAINED ASSETS AND CRIMINAL ENTERPRISES DEPRIVED OF THEIR ATTRACTIVE RATIONALE FOR NEW PARTICIPANTS, MONEY OR THE OPPORTUNITY TO MAKE IT RAPIDLY AND IN LARGE AMOUNTS. PERHAPS THE MOST EFFECTIVE FORFEITURE PROVISION THE LEGISLATURE COULD ENACT WOULD BE A GENERAL IN REM FORFEITURE STATUTE SIMILAR TO THE ONE THAT CURRENTLY APPLIES ONLY TO DRUGS. THIS GENERAL UNIFORM STATUTE WOULD ALLOW LAW ENFORCEMENT TO SUCCESSFULLY PENETRATE THE CORE OF MOST CRIMINAL ORGANIZATIONS.

A GENERAL IN REM FORFEITURE STATUTE WOULD PROVIDE PROSECUTORS WITH A CIVIL REMEDY TO ATTACK A CRIMINAL ORGANIZATION'S STRUCTURE. BY SEIZING ASSETS THAT HAVE BEEN FUNNELED INTO LEGITIMATE BUSINESS ORGANIZED CRIME CAN BE DENIED THE MEANS TO MASK OR COVER THEIR CONTINUED ILLEGAL ACTIVITIES. THEY MAY ALSO BE STRIPPED OF THEIR SO CALLED "LEGITIMATE" FRONTS THAT WILL DENY THEM ACCESS TO THE POLITICAL SPHERE AND PRIVATE INDUSTRY TO WORK THEIR CORRUPTING INFLUENCE.

IN CERTAIN CASES, CIVIL FORFEITURE ACTIONS MAY BE MORE EFFECTIVE THAN CRIMINAL PROSECUTIONS. IN A CIVIL FORFEITURE CASE, THE STANDARD OF PROOF IS ONE OF A PREPONDERANCE OF THE EVIDENCE AS OPPOSED TO PROOF BEYOND A REASONABLE DOUBT WHICH IS REQUIRED IN CRIMINAL CASES. A CIVIL PROCEEDING ALSO REMOVES MANY OF THE OBSTACLES ENCOUNTERED IN CRIMINAL PROCEEDINGS. IN A CIVIL FORFEITURE ACTION, A DEFENDANT DOES NOT HAVE THE PROTECTIONS OR PRESUMPTIONS AVAILABLE IN A CRIMINAL TRIAL. FOR EXAMPLE, WHEN A DEFENDANT REFUSES TO TESTIFY IN A CIVIL CASE, A FACT FINDER MAY

BE PERMITTED TO DRAW AN ADVERSE INFERENCE THAT THE DEFENDANT'S TESTIMONY WOULD HARM HIS OR HER CASE. ANOTHER ADVANTAGE OF THE CIVIL PROCEEDING IS THAT THE COMMONWEALTH CAN ENGAGE IN A BROADER SCOPE OF DISCOVERY AND REACH DEEPER INTO A DEFENDANT'S POCKET TO FIND THE PROCEEDS OF HIS CRIMINAL ACTIVITY. BEYOND THE CREATION OF NEW CIVIL FORFEITURE PROCEEDINGS, THE LEGISLATURE SHOULD CONSIDER THE SIMPLE ADDITION OF CRIMINAL FORFEITURE AS A PENALTY WHEN INDIVIDUALS OR ORGANIZATIONS HAVE BEEN SUCCESSFULLY CONVICTED UNDER THE CRIMINAL PROVISIONS OF THE CORRUPT ORGANIZATIONS ACT. THIS WOULD MEAN PROSECUTORS WOULD NOT HAVE TO RESORT TO SEPARATE CIVIL ACTIONS WHERE CRIMINAL PROSECUTIONS HAVE BEEN SUCCESSFULLY UNDERTAKEN.

THE ADDITION OF FORFEITURE PROVISIONS, WHILE ACTING AS A DISINCENTIVE FOR INDIVIDUALS TO RISK INVOLVEMENT IN CRIMINAL ENTERPRISES, MIGHT ALSO PROVIDE AN IMPORTANT INCENTIVE AND MOTIVATION FOR PROSECUTORS TO EXPAND THE USE OF CRIMINAL PROSECUTIONS UNDER THE CORRUPT ORGANIZATIONS ACT. BY LIMITING THE USE OF THE FORFEITED FUNDS TO CREATING AND MAINTAINING AN ASSET POOL TO FUND FUTURE INVESTIGATIONS, WE CAN REMOVE SOME OF THE LOCAL FUNDING CONSTRAINTS THAT OFTEN BESET LOCAL PROSECUTORS. FURTHER, AS HAS BEEN DEMONSTRATED BY THE DRUG FORFEITURE ACT, WE CAN CREATE A SELF-PERPETUATING FUND FOR CONTINUED AND EXPANDED PROSECUTION OF CRIMINAL ENTERPRISES AT THE LOCAL LEVEL.

EXPANDING OUR MEANS TO ATTACK ORGANIZED CRIME WILL BE OF LITTLE BENEFIT IF WE ARE NOT ABLE TO IDENTIFY CRIMINAL ENTERPRISES AND THEIR MEMBERS. IN RECENT YEARS, SUCCESSFUL PROSECUTIONS OF CRIMINAL ORGANIZATIONS HAVE DEMONSTRATED THE

NECESSITY FOR THE COOPERATION AND EXCHANGE OF INFORMATION BETWEEN DIVERSE LAW ENFORCEMENT AGENCIES. THE DEVELOPMENT OF MODERN INTELLIGENCE SYSTEMS TO ENHANCE THE ABILITY OF FRAGMENTED LAW ENFORCEMENT AGENCIES IN COLLECTING, COLLATING, AND ANALYZING INFORMATION CRITICAL FOR DEVELOPING LONG RANGE AND COMPLEX INVESTIGATIONS HAS BEEN SERIOUSLY AND INAPPROPRIATELY CONSTRAINED. THE RESTRICTION IN THE CRIMINAL HISTORY RECORD INFORMATION ACT WHICH PROHIBITS THE STORAGE OF INVESTIGATIVE AND INTELLIGENCE INFORMATION IN A COMPUTERIZED SYSTEM IS AN UNWARRANTED AND ILL-ADVISED LIMITATION WHICH SHOULD BE REMOVED.

THERE ARE TWO MAIN ADVANTAGES TO BE GAINED BY LAW ENFORCEMENT IF ALLOWED TO STORE INVESTIGATIVE AND INTELLIGENCE DATA IN A COMPUTER SYSTEM. FIRST, THE AMOUNT OF INFORMATION THAT CAN BE STORED AND THE SPEED WITH WHICH IT CAN BE RETRIEVED SAVES TIME, MONEY, SPACE, AND SUBSTANTIALLY INCREASES THE PRODUCTIVITY OF INVESTIGATORS. SECOND, AND PROBABLY MORE IMPORTANT, IS THAT A COMPUTER HAS THE CAPABILITY OF COMPARING SEEMINGLY UNRELATED DATA AT HIGH SPEED AND WITH A DEGREE OF ACCURACY AND THOROUGHNESS THAT INDIVIDUALS SEARCHING IN A MANUAL SYSTEM CANNOT COMPARE.

DURING COMPLICATED INVESTIGATIONS, VOLUMES OF INFORMATION ARE REPORTED OVER LONG PERIODS OF TIME. PLACING AND STORING THIS INFORMATION IN A COMPUTER ALLOWS THE COMPUTER TO COMPARE AND COLLATE RELATED FACTS TO A DEGREE THAT CANNOT BE DONE BY EITHER A SINGLE INVESTIGATOR OR EVEN A WHOLE TEAM OF INVESTIGATORS. THE CORRELATION OF NUMEROUS AND DIVERSE PIECES OF INFORMATION HELPS TO SHOW COMPLICATED RELATIONSHIPS AMONG INDIVIDUALS, BUSINESSES,

AND EVENTS THAT WILL EXPOSE TRENDS AND PATTERNS TO ASSIST IN ESTABLISHING THE SHAPE AND FORM OF A PARTICULAR ILLEGAL ENTERPRISE--A NECESSARY ELEMENT IN PROSECUTING ORGANIZED CRIME.

CONCERNS ABOUT THE SAFEGUARDING OF INFORMATION AND ABOUT THE POSSIBILITY OF IMPROPER DISSEMINATION ARE REAL AND LEGITIMATE. THE RESPONSE, HOWEVER, SHOULD BE DIRECTED TO THE PROCEDURES TO BE USED BY AGENCIES COLLECTING OR SHARING DATA, AND NOT BY FORECLOSING THE USE OF ADVANCED COMPUTER TECHNOLOGY IN ADDRESSING SERIOUS CRIME PROBLEMS.

EVEN WITH THE ENACTMENT OF THESE ADDITIONAL STATUTES, THE COMMISSION CONTINUES TO BELIEVE PENNSYLVANIA WILL NOT REALIZE ITS FULL POTENTIAL TO DEAL WITH ORGANIZED CRIME UNTIL WE HAVE CREATED AN INSTITUTE DEVOTED TO MEETING THE CONTINUING NEEDS OF LAW ENFORCEMENT AGENCIES IN THIS FIELD. CONTAINING ORGANIZED CRIME REQUIRES THE DEVELOPMENT OF A CORP OF SPECIALISTS IN ORGANIZED CRIME CONTROL, PEOPLE WHO ARE UP TO DATE ON CHANGES IN THE LAW, SUCCESSFUL APPLICATIONS OF CIVIL AND CRIMINAL REMEDIES, THE DEVELOPMENT AND USE OF NEW INVESTIGATIVE TECHNIQUES, AND DESIGN AND IMPLEMENTATION OF NEW STRATEGIES TO ADDRESS THE PROBLEM. CURRENTLY, THERE ARE NO CONTINUOUS OR FORMAL TRAINING PROGRAMS IN THE COMMONWEALTH TO PROVIDE CAREER DEVELOPMENT COURSES IN ORGANIZED CRIME CONTROL. AN ORGANIZED OR COMPLEX CRIME INSTITUTE COULD PROVIDE CAREER DEVELOPMENT COURSES ON A REGULAR BASIS. IT WOULD TRAIN PROSECUTORS AND LOCAL INVESTIGATORS IN USE OF STRATEGIES AND TACTICS APPROPRIATE TO THE PROBLEM, INCLUDING USE OF CIVIL AND CRIMINAL REMEDIES AGAINST ORGANIZED CRIME. BESIDES PROVIDING REGULAR COURSE INSTRUCTION AND AD HOC TRAINING AS



REQUIRED, THE INSTITUTE COULD UNDERTAKE DATA ANALYSES AND OTHER RESEARCH TO IMPROVE THE ABILITY OF LAW ENFORCEMENT AGENCIES TO CARRY OUT THEIR COMPLEX CRIME RESPONSIBILITIES.

FINALLY, I WOULD LIKE TO NOTE THAT THESE PROPOSALS ARE NOT NECESSARILY NEW. THE CRIME COMMISSION ESPOUSED THESE TYPES OF REFORMS AS EARLY AS 1970 IN OUR ANNUAL REPORT AND AS RECENTLY AS 1987 BEFORE THIS SAME COMMITTEE. WITH THE PASSAGE OF TIME AND IN LIGHT OF RECENT EXPERIENCE, THE NEED FOR THESE CHANGES IS EVEN CLEARER. THE COMMISSION IS NOT ASKING THAT THE WHEEL BE REINVENTED; RATHER, THAT IT BE COMPLETELY ROUNDED OUT SO THE FIGHT AGAINST ORGANIZED CRIME CAN PROGRESS INTO THE NEXT DECADE WITH A HIGHER POTENTIAL FOR SUCCESS.

THANK YOU.