

TESTIMONY OF
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before the

JUDICIARY COMMITTEE
of the
PENNSYLVANIA HOUSE OF REPRESENTATIVES

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INTRODUCTION. Good morning. I am Lynne Abraham, the District Attorney of Philadelphia. I would like to thank Chairman Gannon and the distinguished members of the Judiciary Committee for coming to Philadelphia and giving me this opportunity to address the important issues surrounding enforcement of existing firearms laws and regulations in Pennsylvania.

As District Attorney of Philadelphia, my commitment to our citizens is that I will use all available resources to protect them from violent crimes, the most serious of which are committed with handguns. In Philadelphia in 1998, there were 274 homicides, 5,528 robberies and 2,970 violent assaults involving firearms. In the past ten years the percentage of homicides involving firearms in Philadelphia has risen from 65 percent to 82 percent. That is the highest percentage in the country.

In Philadelphia's Municipal Court in 1998, 1,320 offenders faced a preliminary hearing or trial on weapons charges alone (this is not including those who are charged with violent felonies like murders, robberies and assaults committed with guns). Of those, 824 were felonies which were held for court. In the first four months of 1999, the Assistant District Attorneys in my Felony Non-Jury Unit disposed of 145 gun cases, and 90 of them resulted in a conviction. Since June of this year, there were 174 cases that had been finally disposed (not those pending trial or sentencing), and 111 of the offenders were convicted.

As you can see, the enforcement of firearms laws is a top priority for me. My office, in conjunction with state and federal law enforcement agencies, social services organizations, and community representatives, has aggressively attacked illegal firearms possession, use or trafficking with several programs in the following ways:

OPERATION CEASEFIRE. We have had great success with Operation Ceasefire in which we send many gun cases to federal court for prosecution under 18 U.S.C.S. § 922(g). Under Operation Ceasefire, every Common Pleas Court firearms case is reviewed for possible transfer to the federal court system. This year, of the 2,305 cases reviewed by my office, 288 were qualified and sent to the U.S. Attorney's Office. They accepted 182 cases, and ultimately indicted 89 offenders. Two assistant district attorneys in my office are cross-designated as federal prosecutors who, along with three federal prosecutors, try these cases. Defendants in the federal system are usually held in pre-trial detention, tried within 90 days, and face much tougher sentences if convicted in federal court of gun charges. For example, judges in Philadelphia rarely sentence a person convicted of illegally possessing a firearm to more than probation. Under Operation Ceasefire, these same offenders are sentenced to at least five years in federal prison.

Even with Operation Ceasefire, the diligent efforts of the

Philadelphia Police Department and my office are seriously undermined by the weak performance - weak in terms of both verdicts and sentences - of some of Philadelphia's Common Pleas Court judges. Some of our judges' lenient attitude toward gun crimes was paid for with the lives and safety of innocent Philadelphia citizens. But by collaborating with the federal system, we have been able to restore justice and appropriately punish dangerous gun criminals. Through our combined efforts, prosecutors now accomplish much more to curb gun crime than when state and federal law enforcement acted alone. We can now get these dangerous individuals off the street for a substantial period of time, and Philadelphia is safer as a result.

POLICY OF THE DISTRICT ATTORNEY'S OFFICE. The policy of the District Attorney's office is to take gun crime very seriously. It is a top priority. As the numbers and severity of firearms violations have increased, my office has made an effort to raise the level of attention paid to these offenses. We prosecute these cases to the fullest extent. There are three units in the District Attorney's office that handle nearly all of the firearms prosecutions: Municipal Court, Felony Waiver, and Juvenile. The chiefs of these units personally review every gun disposition. In Municipal Court, we look at each preliminary hearing that has resulted in a remand as a misdemeanor or a discharge to determine whether we should re-arrest the defendant. For those convicted in our Felony Waiver Unit, the chief reviews the results of all gun

cases so that we get an idea of how to better prosecute the cases. The chief also looks for possible statutory improvements we can recommend to you and sentencing guideline improvements to the Sentencing Commission. Of course, the goal of all of these efforts is to ensure that violators of firearms laws receive sentences which are adequate to protect the public.

PENNSYLVANIA SUPREME COURT DECISIONS. You, as legislators, have passed many good laws as a part of the Uniform Firearms Act, but the laws can only work if our police have the legal ability to catch the gun criminals and we have the ability to present the relevant evidence at trial.

The Pennsylvania Supreme Court has consistently rejected the holdings of the United States Supreme Court, thereby providing criminals with greater protections than provided in the United States Constitution. Simply put, Pennsylvania's grant of numerous state-based rights broader than federal rights effectively frustrates the truth-determining process and gives criminals an unfair advantage at the expense of public safety. These extra rights for criminals result in dangerous offenders being freed to commit more crime, as well as countless other criminals never being apprehended because our police are forced to fight crime with one hand tied behind their backs.

For example, in Commonwealth v. Matos, 672 A.2d 769 (Pa. 1996), the

court held that police are not entitled to seize firearms, drugs, or other contraband even after the criminal has fled and discarded or dropped the contraband. In this case, a police officer approached the defendant to merely ask questions, the defendant fled, the officer gave chase, and the defendant discarded contraband, which the officer picked up. The court suppressed the evidence that the defendant discarded, stating that the defendant's rights were violated when the police chased the defendant, and that his rights were further violated when the officer picked up the contraband. It held that tossing the gun or drugs during a chase is "coerced abandonment." The Matos decision has given criminals an unreasonable advantage. When a criminal with a gun runs from the police, he might get away. However, if he sees he is losing the race, he can merely toss the gun and later argue that it was a coerced abandonment. The court, by insisting that an officer leave a firearm or drugs on the ground, clearly ignores public safety in order to protect criminals.

In Commonwealth v. Hawkins, 692 A.2d 1068 (Pa. 1997), the Pennsylvania Supreme Court held that an anonymous call to 911 with a detailed description of a man with a gun is not sufficient reason for an arrest. Even though the police arrived within three minutes of the call to find a man at the named location wearing the described clothing. The court held that, under the Pennsylvania Constitution, the police did not have sufficient corroboration of the tip to stop the suspect. So, concerned citizens who may wish

to remain anonymous go unheard, and criminals brandishing weapons on street corners are protected.

There are many more such decisions. The practical result is that my office loses motions to suppress, even when the police officers were acting in good faith. We are forced to withdraw prosecution of these cases, or the judges simply discharge the case against the defendant. There are those in my office who estimate that at least half of the cases which are currently withdrawn or discharged would be guilty verdicts if Pennsylvania merely followed federal search and seizure law. Moreover, we would have much more leverage in our plea negotiations if we did not have to take these nonsensical precedents into account.

Perhaps most dangerous of all, police officers in Pennsylvania, unlike their colleagues in the rest of the country, are now legally required to simply walk away and leave the criminal to do what he pleases, even though there are ample grounds - under the law of most of the country - to believe the individual is engaging in dangerous criminal activity. Innocent Pennsylvania citizens pay for our Supreme Court's foolish decisions with their lives, their physical well-being, and their property.

SENTENCING GUIDELINES. Another area in which we can strengthen our response to gun crime is to further strengthen the sentencing guidelines. As they are now, possession of an unloaded weapon is

assigned an Offense Gravity Score (OGS) of only a four, the lowest for a felony. If the gun is loaded the OGS is still only a five. With such low scores, the guidelines allow a career criminal whose Prior Record Score (PRS) is at the maximum to be sentenced to less than a year in county jail. The guidelines simply do not reflect the severity of the offense of carrying an unlicensed, loaded gun on the streets of Philadelphia.

Having reviewed these guidelines, I am asking the Sentencing Commission to raise the OGS of firearms possession to a nine. Under this change, career criminals illegally carrying guns would face serious incarceration. However, the first-time offender who should get leniency is still eligible for probation.

OTHER PROGRAMS AND INITIATIVES. I, along with representatives from my office, participate in city-wide programs such as Mayor Rendell's Handgun Violence Reduction Task Force (whose work included the effort behind the proposal and attempted passage of One-Handgun-a-Month legislation), the U.S. Attorney General's Anti-Violence Initiative, and "Goods for Guns," to which I personally donated \$1,000. These multi-disciplinary efforts address issues of guns, gun violence and community safety.

This office works closely with the Police Department to ensure the reduction of gun violence in our city. John Delaney, Deputy of the Juvenile Division of the District Attorney's Office, assists the

Police Department in gun law enforcement training. He has made several presentations on Pennsylvania firearms laws and regulations, and has developed an at-a-glance chart of all gun offenses. Our aim is to aid the police in making proper arrests so that we may vigorously prosecute the offenders.

Thanks to the cooperative attitude fostered by Commissioner John Timoney, the Philadelphia District Attorney's office has been able to offer constructive suggestions to enhance gun law enforcement by the Police Department. We have been instrumental in working with the Police Department to better organize the handling of gun cases, and make these investigations a top priority. At our suggestion, there is now one commander, Captain Joe O'Donnell, who oversees all gun cases. Additionally, every division now assigns one detective to follow up on each case. The police are bringing to gun cases the investigative tools that have been applied to drug cases. The result is more arrests and more convictions for gun offenses.

A very successful program in Philadelphia is the Youth Violence Reduction Program. This is an effort joined by Juvenile Court, Adult Court, Philadelphia Safe and Sound, the Philadelphia Police Department, Public/Private Ventures, and community organizations. This project identifies persons under the age of twenty-four who are high-risk to kill or be killed. It provides services such as job training and placement, recreational activities, and drug/alcohol screening and treatment. There is also intensive

surveillance by police and probation officers, which results in swift intervention if a participant does not take advantage of the services provided.

A program in our Juvenile Court is a model for firearm violence prevention initiatives. For two years, we've had a program to address the specific offense of carrying a firearm. "Don't Fall Down in the 'Hood" was developed by our office, along with the Philadelphia Department of Human Services (DHS), the Juvenile Court system, and the Youth Homicide Review Team. The program is administered by the Institute for Development of African-American Youth in conjunction with St. Gabriel's, and funded by DHS.

"Don't Fall Down in the 'Hood" is a three-month program specifically designed to for those juveniles who are adjudicated delinquent for the offense of carrying a gun, not using one. It targets gun-carrying behavior of the offender while addressing issues of community protection, defendant accountability and competency development.

For the first two months of "Don't Fall Down in the Hood," the offender must attend classes four days a week from 3:30 to 7:30 P.M. and all day Saturday. They receive academic support for their school studies, as well as instruction in entrepreneurial skills. This keeps them off the streets during the prime hours that juveniles are likely to get in trouble, and it teaches them

essential tools to become a productive member of the community. They are also taken on weekly trips to places such as the Medical Examiner's office, Magee Rehabilitative Center, hospital trauma centers, funeral homes, and the prisons. This is an effort to show the offender, up front and personal, the consequences of gun crime. During the last month of the program the offender is required to perform sixty hours of community service.

Although this is a new program and specific numbers are not available, it is already clear that it is working. Most participants during the two years of "Don't Fall Down in the 'Hood" have successfully completed the program. I would like to see a similar program for adult offenders. If we can put our efforts into programs like this one, that target those who carry a gun but have not yet used it to commit a violent crime, we will be able to reduce the amount of gun offenses in our city even further.

AN IMPORTANT NEXT STEP. My next priority, if I can get the funding to do it, is to create a special firearms unit in the District Attorney's office to focus on violations of probation by gun criminals.

My office is working with the Probation Department to increase the supervision of firearms offenders. Because of the weak sentencing guidelines and the difficulty we face under Pennsylvania caselaw, firearms offenders often receive a sentence of probation. A

program, however, is close to being approved. We have focused on the prohibition of possession of a firearm. Every time a probationer first sits with the assigned probation officer they will review the specific conditions of probation in reference to firearms. The probationer will be asked directly if he owns or possesses any guns in his home. If so, they will have thirty days to provide proof that they have disposed of the gun by (1) surrendering it to the police, (2) selling it to a licensed firearms dealer, or (3) selling it, through a licensed firearms dealer, to an individual who does not live in the probationer's household and who is eligible under Pennsylvania law to own a gun. The probationer may be asked to give permission for the probation officer to search his house. It is a condition of release from state prison that a parolee does not live in a house with a gun, even if it belongs to someone else. I strongly believe that should also be a condition of probation for any gun offense.

LEGISLATIVE PROPOSALS. The Uniform Firearms Act contains many sound laws that law enforcement uses to combat the firearms problem in Philadelphia. The policies and initiatives I mentioned are making a difference, however, these important efforts still are not enough. We need additional legislative and sentencing changes to help us battle the serious problem of guns on our streets.

One-gun-a-month. The problem of straw purchases and illegal transfers of firearms would be best addressed by the enactment of

legislation similar to the proposed Firearm Trafficking Prevention Act, embodied in House Bills 46 and 402 of 1999. These bills propose to limit the purchase of handguns to one per month to reduce multiple straw purchases that result in illegal trafficking. If we can limit the flow of illegal guns onto our streets we can reduce the number of gun-related injuries, deaths, and crimes.

Possession of a firearm by a former felon. I support Operation Hard Time, the Attorney General's initiative to promote changes in the law and sentencing guidelines. Operation Hard Time would allow us to prosecute convicted criminals who illegally possess firearms by using charges that carry tougher sentences. Currently, the law provides that a convicted criminal who possesses a firearm commits only a misdemeanor of the first degree. The weak sentencing guidelines enable judges to sentence these criminals to little or no jail time. Through Operation Hard Time, we seek to amend 18 Pa.C.S. § 6105, Persons Not to Possess, Use, Manufacture, Control, Sell or Transfer Firearms, by increasing the grading from a first degree misdemeanor to a second degree felony. Further, we will urge the Pennsylvania Commission on Sentencing to increase the offense gravity score for a violation of § 6105 from a four or five to a nine. These changes would create a guideline sentence range with a minimum of eighteen to thirty months in prison. Prosecutors throughout the state will aggressively charge and prosecute defendants under this tougher law if it is approved by the General Assembly.

Guns and drugs. I would also like to see the legislature make it a separate offense to possess guns in close proximity to drugs or other contraband. Currently, under 42 Pa.C.S. § 6801(a)(7) of the Forfeiture Law, any firearm that is used to facilitate a drug offense must be forfeited to the Commonwealth. It is a rebuttable presumption that firearms found in close proximity to drugs were intended to facilitate drug activity. However, it is not a separate crime to possess firearms with drugs. Often, large stores of weapons are found in a house that is being used to traffic drugs. We charge the defendants with the misdemeanor offense of Possessing an Instrument of Crime, 18 Pa.C.S. § 907, which is very often thrown out by the judge. Dangerous traffickers who use guns to protect their illegal drugs should face tougher sanctions.

Possession of firearms with obliterated serial numbers. The Pennsylvania Uniform Firearms Act should be amended to address a problem we often face in Philadelphia. Section 6117 of the Pennsylvania Crimes Code, Altering or Obliterating Marks of Identification, makes it a felony in the second degree to alter or obliterate the mark or identification, or serial number, from a gun. This law provides a statutory presumption that possession of the gun with an altered serial number is *prima facie* evidence that the possessor of such a firearm is the person who altered it. However, this presumption only gets us past the preliminary hearing where the standard of proof is lower than at trial. Because the crime is the action of altering or obliterating the serial number,

the courts have held that mere possession of the gun with the altered marks is not sufficient evidence to prove beyond a reasonable doubt that the possessor is guilty of altering it.

As a practical matter, unless the defendant confesses to obliterating the serial number himself, there is no way to prove it. The statute can be made workable by amending the elements of the offense so that the crime is the actual possession of a firearm with an altered or obliterated serial number. There is no legitimate purpose for possession of a gun with an altered serial number; the only purpose is to make the gun more difficult to trace after it has been used in a crime.

CONCLUSION. Thank you for allowing me to speak to you today on the very important issue of firearms laws. I appreciate that you are taking the time to gather information about the way the existing laws and regulations are implemented and enforced. I commend your efforts to ensure that gun laws in Pennsylvania are not only well written, but well enforced. We can now move forward with crucial legislation that will provide law enforcement with better tools to investigate, arrest and prosecute gun-toting criminals.

