

The seal of the Office of Attorney General of Pennsylvania is faintly visible in the background. It features a central shield with a scale of justice, a sword, and a laurel wreath. The shield is surrounded by a circular border containing the text "OFFICE OF ATTORNEY GENERAL" and "COMMONWEALTH OF PENNSYLVANIA".

**Testimony of
Shawn C. Wagner
Senior Deputy Attorney General**

**Before the
House of Representatives Judiciary Committee
Subcommittee on Courts**

Public Hearing on HB 2165

**City Council Chambers
Lancaster, PA**

August 29, 2000

Good morning. I would like to thank Chairman Clark and the other members of the Subcommittee on Courts for having me here to testify on this important legislation. My name is Shawn Wagner. I am a senior deputy attorney general in the Office of Attorney General, Drug Strike Force Section. I am responsible for investigating and prosecuting mid to upper level drug dealers, primarily within Central Pennsylvania.

Due to a previously scheduled event, the Attorney General is not able to be here today, but asked me to voice to you his strong support for House Bill 2165, and to commend Representative Bard on its introduction. This legislation complements Act 59 of 1999, which increased the penalty for convicted felons who illegally possess firearms from a misdemeanor to a felony. That offense now carries a maximum sentence of up to ten years in prison. The enactment of that change was one component of "Operation Hard Time," which is a state and local law enforcement initiative developed by Attorney General Mike Fisher and several district attorneys to aggressively investigate, charge and prosecute convicted felons who illegally possess firearms. The goal is to remove gun-toting felons from the streets and put them in state prison where they will now serve hard time.

Operation Hard Time was based in part on the federal program in Richmond, Virginia called "Project Exile." This program also has been replicated by the United States Attorneys

Office for the Eastern District in Philadelphia, under the name "Operation Cease Fire." While federal law enforcement officers have a much tougher charge that carries a five-year mandatory minimum for possession of a firearm during the commission of a drug offense, it is important to note that these federal law enforcement initiatives are more narrowly focused. They normally apply only to the following offenders:

- 1) offenders with prior convictions for a violent felony,
- 2) those who brandish or fire their gun during a drug deal, and
- 3) people who traffic guns.

While Attorney General Fisher strongly supports these federal law enforcement initiatives, he developed Operation Hard Time so that state and local law enforcement officers can cast a wider net and prosecute *any* convicted felon found in possession of a firearm. Once Act 59 went into effect this past spring, Attorney General Fisher, district attorneys and state and local police have been implementing Operation Hard Time on a countywide level. To date, Operation Hard Time has been launched in Cumberland, Lehigh and Lawrence counties. In the near future, we will kick-off Operation Hard Time in Berks and Lancaster counties.

While Attorney General Fisher and district attorneys throughout Pennsylvania will continue to implement Operation Hard Time, the General also believes that we need to strengthen the law by specifically targeting dangerous drug dealers. Attorney General Fisher supports HB 2165 because it will give state and local law enforcement officers the same

powerful weapon that federal law enforcement officers have to wield against armed drug dealers. With this tougher penalty, state and local law enforcement officials can expand on Operation Hard Time and use this new law to target gun-toting drug dealers as well as gun-toting convicted felons.

In my duties as a deputy attorney general, I have prosecuted major drug dealers within Central Pennsylvania since 1993. During this time period I have been involved in numerous prosecutions in which drug dealers routinely use firearms to facilitate their drug distribution. In most cases, I have been unsuccessful in prosecuting the firearms aspect of these investigations because I lacked the statutory authority.

Let me offer several specific examples to highlight this point. Last year, I was involved in a major investigation of cocaine distribution within Lancaster City. This investigation culminated in a series of search warrants throughout Lancaster City. During the execution of one of these warrants at a defendant's residence, the defendant confronted the police brandishing a 9mm pistol, and even attempted to fire the gun. This defendant had previously made numerous undercover deliveries of cocaine to the police, and the police subsequently seized several ounces of cocaine during this search of the defendant's residence. Under current Pennsylvania law, the mandatory sentence for this defendant's drug distribution was not enhanced by his possession and use of his firearm. By contrast, if this defendant was prosecuted federally, he would be facing a separate seven-to-ten year mandatory minimum sentence for brandishing the firearm and attempting to discharge it. This would be in addition to any mandatory sentences for the drug

violations.

As another example, two years ago our Office was involved in an investigation into the distribution of cocaine and methamphetamine in Berks County. During the execution of a search warrant on a defendant's residence, the defendant attempted to gain entry into a safe when he was taken into custody by law enforcement authorities. A search of the safe revealed quantities of cocaine, methamphetamine and several firearms, including a water-cooled automatic machine gun. Under current Pennsylvania law, and the U.S. Attorney's guidelines, this defendant could not be charged with any firearms violations. Furthermore, the defendant's mandatory drug sentence could not be enhanced by the presence of these firearms with these dangerous drugs.

This lack of culpability is further exacerbated when a defendant is licensed to possess a firearm on his person or in his vehicle and uses this firearm to facilitate his drug distribution. Our narcotics agents have been involved in many cases where defendants were involved in the distribution of drugs while in the possession of firearms for which they had a permit. Under current Pennsylvania law, these defendants could not be charged with any firearms violations. And again, the defendant's drug sentence would not be enhanced by the presence of the gun. Yet, it is clear that these defendants possessed these firearms for one purpose only: to protect and facilitate their drug distribution. House Bill 2165 will directly address this issue and close this loophole in the law.

This direct connection between drug dealing and the possession of firearms is not limited

to cocaine, heroin and methamphetamine. Two of the above prosecutions involved defendants who were distributing ecstasy and marijuana. House Bill 2165 provides prosecutors with the tool they need to stop drug dealers from using firearms to facilitate their business, regardless of the type of controlled substance being distributed.

In most Pennsylvania cases, when drug dealers possess firearms to further their business, law enforcement's only recourse is to refer the case to federal authorities. As I mentioned before, under the United States Code, any person involved in a drug trafficking crime who uses or carries a firearm, or who, in furtherance of any such drug trafficking, possesses a firearm, faces mandatory sentences ranging from five to ten years. Unfortunately, the United States Attorney's Office has discretion as to whether it will accept a referral on these type of cases. If the United States Attorney's Office does not accept the referral, then these drug dealers who possess firearms to carry out their drug deals are not prosecuted to the fullest extent of the law.

Other states have recognized that there is a direct connection between the drug trade and the possession of firearms. At present, at least six other states have enacted legislation which makes it a separate crime to possess a firearm while distributing drugs and/or enhances the mandatory sentence for the distribution of drugs. I have copies of each of these state statutes and will make them available to the Committee.

Again, the Attorney General wholeheartedly supports House Bill 2165. We look forward to working with the Judiciary Committee to move the bill along in the process when the

Legislature returns this fall. Attorney General Fisher believes that legislation such as House Bill 2165 and the legislation which initiated "Operation Hard Time" will result in fewer guns in the hands of drug dealers and more gun-toting felons behind bars, making Pennsylvania an even safer place to live.

Thank you and I welcome questions about my comments.