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EXPLORING FEDERAL SOLUTIONS TO THE STATE AND LOCAL FUGITIVE CRISIS

Testimony of R. Seth Williams
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Good morning Chairman Specter, my name is Seth Williams, and I am the newly elected District Attorney of Philadelphia. I very much appreciate the interest you have taken in the problems of Philadelphia's criminal justice system. As you know, I was sworn into office on January 4, 2010, and I have vowed to reform what I see as a broken system. Among the most important challenges we face are increasing our conviction rate and ending the fugitive crisis.

In order to achieve these goals and to make Philadelphia safer, it is critical that those of us in all levels of government – local, state and federal – collaborate together. Your hearings, Senator Specter, are bringing us all together to discuss possible solutions in a candid, respectful manner.

I thank you for your leadership and very much look forward to working with you as we begin to reform the system and make our neighborhoods safer.

You have asked me to talk this morning about the fugitive crisis here in Philadelphia. You are absolutely right, Senator Specter, this is a crisis. Together, we must make a series of changes to ensure that the criminals that fail to show up for court are apprehended and held accountable for their criminal acts. Consider the following statistics, which reveal a broken system:

- The number of outstanding warrants in Philadelphia is nearly 50,000, and there are nearly 40,000 individual fugitives.
- Each year, about 1 out of every 3 defendants fails to show up for at least one court hearing.
- There are barely more than 50 court officers to catch these fugitives.
- Among the nation's largest counties, Philadelphia ties for the highest felony fugitive rate.
- Philadelphia courts issue approximately 25,000 bench warrants each year for criminal defendants who do not show up for court.
- Over the last 30 years, fugitives owe the city \$1 billion in forfeited bail.

The primary reason we have so many fugitives walking our streets is that our bail system in Philadelphia is broken. Our bail system neither assures the presence of defendants at court nor makes them subject to the financial penalties for skipping out on bail.

As you know Chairman Specter, bail affords our courts the ability to release defendants after they are charged with certain crimes by allowing payment of a sum of money in exchange for the release of that person as a guarantee of his or her appearance at trial. In Philadelphia, eligible defendants are released on bail when just 10% of the total bail amount is paid. Whoever pays that amount is – in theory – on the hook for the remaining 90% of the full bail amount should the defendant not appear at trial.

A properly functioning bail system helps to ensure the defendant's presence at trial in two ways: 1) by providing for the apprehension of the defendant if he or she does not appear

in court; and 2) by providing for the forfeiture of the full bail amount should the defendant flee.

In Philadelphia, neither of these two assurances exists. Instead, criminals are well aware of the unfortunate and very dangerous reality that 1) if they fail to show up to court, they will very likely not be apprehended; and 2) whoever put up the initial 10% will almost never be held accountable for the remaining 90% of the bail money. In short, the reality is that criminals are incentivized to skip court because there are no consequences when they do so.

The problem we face with our bail system is not a failure of policy. There is some logic to requiring only a small portion of the full bail amount to be paid. But the failure lies with the implementation of this policy because there are few financial or criminal consequences for defendants who fail to show up. The statistics I cited at the beginning of my testimony prove this point.

It is no wonder why many crime victims in Philadelphia have little confidence in our criminal justice system. Imagine the shock, disappointment and anger a crime victim must feel when the person who victimized him or her fails to appear in court, roams the street freely, and never faces any meaningful consequence for flouting the system yet again. Our victims expect defendants to show up in court. So do I, and I know, Mr. Chairman, you do as well.

Professor John Goldkamp of Temple University describes this problem best:

The harm done by the billion-dollar fugitive caseload is serious. Many of these are defendants who flagrantly disregard the authority of the judicial system and do damage to the reputation of our system's presumption of innocence. They return to the streets to continue to prey upon the neighborhoods they were removed from. They contribute mightily to citizens' perceptions that serious offenders can scoff at the system and continue doing whatever they were doing before they were arrested.

This is not, as some have said, a problem that all big cities face. In fact, data from the Department of Justice shows that other many other urban areas have far lower felony fugitive rates: Dallas (2%); Los Angeles (3%); Cook County (4%), and Bronx (5%).

There is no magic bullet to solving the fugitive crisis. We are, however, taking important steps toward reform by the fact that we are here today identifying the problems and discussing potential solutions is a critical first step. To fix this problem, we will have to work together on all levels – local, state and federal -- to explore new innovative ideas, better support preexisting programs and policies and identify appropriate sources of funding. I look forward to working with you, as partners in this important endeavor.

How do we address the crisis? We need to look at ideas that do one of two things: 1) provide for the apprehension of fugitives; or 2) increase the likelihood that the person who has put down 10% bail will be liable for the remaining 90% of the full bail should

the defendant fail to appear in court. To these ends, I would like to offer a few ideas that I believe warrant further exploration and consideration:

- Increase Safe Surrender Programs
 - Fugitive Safe Surrender encourages those wanted for non-violent felony or misdemeanor crimes to voluntarily surrender to the law in a faith-based or other neutral setting. It has operated in more than 15 jurisdictions, including Philadelphia. In September, 2008, more than 1,200 individuals with outstanding warrants turned themselves in at the Philadelphia True Gospel Tabernacle Church of God in Christ.
 - This operation was an effective inter-agency collaboration with my criminal justice colleagues in Philadelphia. Additionally, Safe Surrender would not have been possible without your guidance Chairman Specter. This successful story reminds us that in order to encourage fugitives to turn themselves in, they must trust that the criminal justice system will treat them fairly. The media campaign that was used to bring in fugitives to the Tabernacle Church during those four exciting days need not stop because the four days of the Philadelphia-Safe Surrender as supervised by the U.S Marshall ended. It is important that we continuously educate the public about where they can surrender themselves or someone else they know if there is a warrant out for their arrest.
- Have Appropriate Public or Private Entity Go After Uncollected Forfeited Bail
 - We have \$1 billion in uncollected forfeited bail. I know full well that much of this money is uncollectible. Many of the defendants who forfeited the money and their families simply have no money. But at the same time the message is clear to criminals: there are no financial consequences if you skip out on bail. We must change this perception. Criminals need to know that if they skip bail, we will go after the full bail amount that can be collected. We can no longer allow valid, collectable judgments for substantial sums of money go unenforced.
 - It is not always the severity of punishment that deters crime but rather the swiftness and certainty of punishment that deters future criminal conduct. This logic applies to the fugitive crisis: if fugitives know that any time they fail to show to court, someone may be on his way to collect the available forfeited bail, then I believe criminals will get the message that there are consequences for failing to appear in court. If we commit ourselves to collecting forfeited bail money in the appropriate circumstances, this will deter defendants from becoming fugitives.
 - Additionally, we will bring in much needed money to the criminal justice system. To successfully expedite collections, an appropriate public or private entity should be tasked with collecting forfeited bail money, a portion of which the entity would keep. This will also bring needed money

into the city.

- Effectively Carry Out Financial Background Checks of Those Who Put Up Bail Money
 - In many cases, the defendant puts up the bail money. In other cases, it is a family member or friend who has paid. There is no review of the person's financial resources. This does not make sense, and it is detrimental to the community at large. If we know the person can never pay the forfeited amount of bail, that person should never be permitted to offer bail in the first place. When someone buys a car or house or takes out even a small loan, that person's credit is checked. Unfortunately, no such due diligence occurs for anyone putting up bail. That makes no sense. We need to consider requiring some basic review of a person's financial suitability.
- Focus Our Efforts on the Most Dangerous Fugitives
 - We have to be smart on crime by targeting our resources on the most dangerous fugitives. We simply do not have the resources to focus on each and every single outstanding warrant. I have already spoken about building community trust when I spoke about Safe Surrender and the importance of educating the public. The most dangerous egregious offenses take up only 2 percent of the crimes convicted but they are the highest risk to the community, particularly as a fugitive. We need to find more effective ways of better identifying which defendants are high risk so that if they do become fugitives we can take more proactive steps to finding this dangerous individual.
 - I believe that by receiving technical assistance and by working with national experts we can identify which fugitives pose the greatest risk to the community. I hope that we can work together, Chairman Specter, to identify some of these experts and others who can provide us technical assistance.
- Better Monitoring of Defendants Out on Bail
 - Technological advances, such as electronic monitoring and GPS devices, allow law enforcement to track the whereabouts of certain defendants, sometimes on a real time basis. We should consider investing in more electronic monitoring and GPS devices so that conditions of bail can increasingly require that the most high risk defendants wear such a device. Fugitives wearing these devices can typically be tracked down.
- Abolish the Office of the Clerk Of Quarter Sessions
 - This office is responsible for collecting bail and overseeing bail forfeitures. It has not done so effectively, and it is time to shift the bail functions to the courts in a way that will modernize and streamline the process. It simply makes no sense to retain an office that contributes to the fugitive crisis instead of alleviating it.

- Increase Resources to Law Enforcement
 - We need more officers going after the known and high risk fugitives. Currently about 50 officers lead this endeavor, but each officer has an average of over 900 cases at a given time. Additional resources, more information sharing, and additional task forces will allow us to expedite more searches for dangerous perpetrators.
 - I also want to endorse legislation from last session, S. 3136 (FIND Act) and S. 3143 (Capture Arrest and Transport Charged Fugitives Act), which would provide financial incentives to States to enter new and outstanding felony warrants into the National Crime Information Center (NCIC) database by authorizing grants to State and local agencies to upgrade their warrant databases. These are precisely the kind of incentives we need to upgrade our systems to be able to capture more fugitives, especially those that cross state lines.
- Secure Funding
 - To make any of the changes described above, we will need to secure appropriate funding. I know that budgets are tight, and we are all scaling back as we weather the economic crisis. But I hope that as we discuss these initiatives we think of them as investments that will ultimately give the city a much needed return. I am certain that we can work together to find the necessary funding and ultimately achieve our mutual goals.

Chairman Specter, thank you for the opportunity to appear before you today. This is an important hearing. I hope that this is the first of many opportunities we have to work together. I hope that going forward we can freely exchange our ideas and suggestions and determine the best and most efficient ways of addressing and eliminating our fugitive crisis in Philadelphia.