

**SELECT COMMITTEE ON
RESTORING LAW AND ORDER**

**THIRD REPORT
NOVEMBER 29, 2022**

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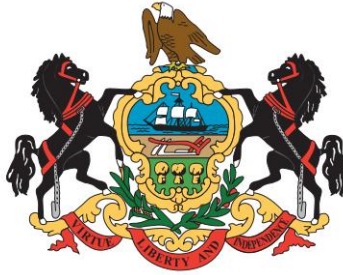
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HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

November 29, 2022

Honorable Members of the House of Representatives,

House Resolution 216 established the Select Committee on Restoring Law and Order to review and investigate rising rates of crime, the use of public funds intended for enforcing the law and prosecuting crime, and the enforcement of crime victims' rights and the use of public funds intended to benefit crime victims in the City of Philadelphia.

Over the past several months, the Select Committee and counsel engaged in a sweeping and rapid review of law and order in the City of Philadelphia. This Third Report of the Select Committee is a compilation of the work completed to date, and speaks to the comprehensive nature of the Committee's approach. Additional analysis of data gathered by the committee is warranted next session.

I deeply appreciate each and every individual who offered testimony to the Select Committee, especially the victims of violent crime who shared their stories. It is not easy to relive the worst experiences of your life in front of a group of elected officials.

As Chairman, I am not content to simply hear these stories. There must be action. It is irresponsible to idly stand by while a throng of voices cry out for help.

The Third Report of the Select Committee includes concrete recommendations to help restore law and order in the City of Philadelphia. I believe all three branches of government – on the local and state level – can be a part of the solution.

With that in mind, no recommendation or proposal can replace effective prosecution of crime by a district attorney committed to the rule of law. This Third Report outlines, in stark terms, District Attorney Lawrence Krasner's shortcomings in his role as a prosecutor. Leading voices across the political and legal landscape have expressed grave concerns about the district attorney's actions, and I share these concerns.

The election of Mr. Krasner was a repudiation of heavy-handed law-enforcement practices prevalent in Philadelphia for many years. These past practices were wrong, and directly resulted in far-reaching consequences both for individuals and society as a whole.

Many hoped Mr. Krasner's reforms would bring a new dawn of justice to a city that has long faced challenges. Unfortunately, by any objective measure, his policies have failed Philadelphians. The facts speak for themselves. Record numbers of shootings, homicides, and carjackings have residents living in fear and businesses closing.

As Chairman, I have come to the conclusion that Mr. Krasner will not change his ways. In my view, as long as he holds the office of district attorney, the city will struggle to maintain law and order. And those who will suffer the most will be the citizens of Philadelphia, terrorized by violent criminals who should be behind bars.

Those who would victimize others, those who terrorize innocent children, those who resort to violence that holds whole neighborhoods hostage, those who repeatedly and recklessly break the law without concern for the havoc their actions cause on others – these individuals need to be held to account for their decisions. For many, this is not happening in today's Philadelphia. After reviewing the facts, I conclude that this untenable situation will continue to exist as long as Mr. Krasner remains in office.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "John Lawrence", with a long, sweeping underline.

Representative John Lawrence
Chairman, Select Committee on Restoring Law and Order

COMMITTEE STRUCTURE

House Resolution No. 216, Printer's No. 3313 ("HR 216"), adopted on June 29, 2022 by a bipartisan majority of the Pennsylvania House of Representatives ("House"), established a five-member Select Committee on Restoring Law and Order ("Select Committee" or "Committee") authorized and empowered "to investigate, review and make findings and recommendations concerning rising rates of crime, law enforcement and the enforcement of crime victim rights," as further detailed therein.¹

The five members of the Select Committee include three members from the majority party and two members from the minority party. In accordance with HR 216, the Speaker of the House appointed the Chairman of the Select Committee, a member of the majority party, from among the Select Committee's five members.

COMMITTEE MEMBERSHIP

Chairman:

Representative John Lawrence (Chester and Lancaster Counties, 13th Legislative District)

Majority Members:

Representative Torren Ecker (Adams and Cumberland Counties, 193rd Legislative District)

Representative Wendi Thomas (Bucks County, 178th Legislative District)

Minority Members:

Representative Amen Brown (Philadelphia County, 190th Legislative District)

Representative Danilo Burgos (Philadelphia County, 197th Legislative District)²

¹ The General Assembly of Pennsylvania, House Resolution No. 216, Session of 2022, (June 27, 2022), Printer's No. 3313, <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2021&sessInd=0&billBody=H&billTyp=R&billNbr=0216&pn=3313>.

² Representative Burgos notified Speaker Bryan Cutler of his intent to resign from the Select Committee on November 18, 2022.

COMMITTEE PURPOSE

The House established the Select Committee by adoption of HR 216 as a result of the significant increase in violent crime and homicides in the City of Philadelphia since approximately 2018, the year that progressive District Attorney Lawrence Krasner (“DA Krasner”) took office in the Philadelphia District Attorney’s Office (“DAO” or “Office”). HR 216 charges the Select Committee to investigate, review, and make findings and recommendations concerning:³

(1) The rising rates of crime, including, but not limited to, the enforcement and prosecution of violent crime and offenses involving the illegal possession of firearms, in the City of Philadelphia.

(2) The use of public funds intended for the purpose of enforcing the criminal law and prosecuting crime in the City of Philadelphia.

(3) The enforcement of crime victim rights, including, but not limited to, those rights afforded to crime victims by statute or court rule, in the City of Philadelphia.

(4) The use of public funds intended for the purpose of benefitting crime victims, including, but not limited to, crime victim compensation and crime victim services, in the City of Philadelphia[.]

HR 216 further charges the Select Committee to make findings and recommendations, including, but not limited to, the following:⁴

(1) Determinations regarding the performance of public officials empowered to enforce the law in the City of Philadelphia, including the district attorney, and recommendations for removal from office or other appropriate discipline, including impeachment.

(2) Legislation or other legislative action relating to policing, prosecution, sentencing and any other aspect of law enforcement.

(3) Legislation or other legislative action relating to ensuring the protection, enforcement and delivery of appropriate services and compensation to crime victims.

(4) Legislation or other legislative action relating to ensuring the appropriate expenditure of public funds intended for

³ HR 216, *supra* note 1 at 1:6-2:3.

⁴ *Id.* at 2:5-26.

the purpose of law enforcement, prosecutions or to benefit crime victims.

(5) Other legislative action as the select committee finds necessary to ensure appropriate enforcement of law and order in the City of Philadelphia[.]

EXECUTIVE SUMMARY

On October 24, 2022, the Select Committee unanimously voted to adopt the Second Interim Report as its investigative findings under HR 216 as of that date. Upon motion of the Chairman of the Select Committee, an overwhelming bipartisan majority of the House then voted to accept the Second Interim Report from the Select Committee.⁵ The Chairman explained the following regarding the Second Interim Report and the Select Committee’s continuation of work:⁶

This report paints a scathing picture of Philadelphia District Attorney Larry Krasner’s utter failure to uphold law and order in the city of Philadelphia. Extensively researched, the report is filled with first-hand accounts of Krasner’s poor leadership decisions, eye-opening statistics and data analysis, and statements from crime victims whose lives have been forever altered.

The committee is not alone in its assessment of DA Krasner’s performance. A study commissioned by the Philadelphia Police Department blames “new prosecutorial policies and decision-makings under [DA Krasner] for the dramatic increase in Philly shootings,” and goes on to admit “criminals know that their likelihood of getting caught with a gun is slim, and even if they get caught, they feel that they can leave without severe (or any) consequences.” Sentencing commission data bears this out – gun charges are withdrawn by the Krasner administration at twice the rate of the state average. Former employees who worked directly under DA Krasner report that his failure to properly train new assistant DAs on basic courtroom procedures directly contributes to the dismissal or withdrawal of a significant number of court cases. The DA’s own numbers show a shocking two-thirds of all violent offense prosecutions this year have been withdrawn by his office or dismissed by the courts. On top of all of this, state and federal judges have taken unprecedented steps to excoriate DA Krasner for his outrageous and reckless actions that have made a mockery of long-standing judicial processes.

Criminals are not being prosecuted. Crime rates are up dramatically. And the citizens of Philadelphia are paying the price. A thousand Philadelphians have been murdered since the beginning of 2021. Carjackings and non-fatal shootings have skyrocketed under Krasner’s watch. Residents literally fear for their lives. Morale in the law enforcement community is low. And what is DA Krasner’s response to this? Rather than change direction or realign his prosecutorial priorities, DA Krasner hired Washington, D.C., lawyers and sued the Select Committee in an attempt to stop the investigation and set roadblocks at every turn. Rather than focus on prosecuting criminals, he scheduled feel-good press events to grandstand to his

⁵ See Office of the Parliamentarian, *House of Representatives Daily Session Update*, (Oct. 24, 2022), <https://www.legis.state.pa.us/WU01/LI/HS/2021/0/20221024.htm>.

⁶ John Lawrence, *House Select Committee on Restoring Law and Order Releases Second Interim Report*, (Oct. 24, 2022), <https://www.pahousegop.com/News/31442/Latest-News/House-Select-Committee-on-Restoring-Law-and-Order-Releases-Second-Interim-Report> (hyperlinks omitted).

handpicked supporters – even travelling to Harrisburg last week to stand in front of the Capitol and address an imaginary crowd. Rather than respond to serious bipartisan calls for change to his office’s failed policies, he told the Select Committee, “We are proud of our work.”

Today’s report is by no means a conclusion of the committee’s work. The investigation into the historic crime and violence in Philadelphia and recommendations for possible solutions will continue in earnest over the coming weeks.

After the acceptance of the Second Interim Report, the Chairman of the Select Committee received a letter from a colleague in the House regarding the investigation.⁷ No other members have written to the Chairman.

On October 26, 2022, some members of the House (including Representative Ecker, a member of the Select Committee) announced their intention to file articles of impeachment against DA Krasner.⁸ Representative Martina White (Philadelphia County, 170th Legislative District) introduced House Resolution No. 240, Printer’s No. 3607 (“HR 240 PN 3607”), to impeach DA Krasner “for misbehavior in office[.]”⁹ HR 240 PN 3607 was referred to the Judiciary Committee that day.¹⁰ On November 15, 2022, a motion to report HR 240 PN 3607 as committed passed in the Judiciary Committee, by a vote of 14-8, approving and forwarding the articles of impeachment to the full House.¹¹

On November 16, 2022, the House adopted Amendment A 05891 (offered by Representative Ecker) by a vote of 107 to 85,¹² and the resolution was assigned Printer’s No. 3634 (“HR 240 PN

⁷ Representative Danielle Friel Otten, letter in response to the Second Interim Report of the Select Committee, (Oct. 26, 2022), attached hereto as Attachment A.

⁸ Pennsylvania House Republican Caucus, Announcing Filing of Articles of Impeachment, (Oct. 26, 2022), <https://www.pahousegop.com/Video/LatestVideo>.

⁹ Representative Martina White, House Resolution No. 240, Session of 2022, (Oct. 26, 2022), Printer’s No. 3607, at 1:1-2, <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2021&sessInd=0&billBody=H&billTyp=R&billNbr=0240&pn=3607>.

¹⁰ See Pennsylvania General Assembly, Bill Information, Regular Session 2021-2022 House Resolution 240,

<https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2021&sInd=0&body=H&type=R&bn=240> (last visited Nov. 9, 2022).

¹¹ See Pennsylvania House of Representatives, House Committee Roll Call Votes, HR240 PN3607, (Nov. 15, 2022),

<https://www.legis.state.pa.us/cfdocs/legis/RCC/PUBLIC/listVoteSummaryH.cfm?sYear=2021&sInd=0&cteeCde=24&theDate=11/15/2022&RollCallId=2141>.

¹² See Pennsylvania House of Representatives, House Roll Calls, House Resolution 240 PN 3634, (Nov. 16, 2022),

https://www.legis.state.pa.us/cfdocs/legis/RC/Public/rc_view_action2.cfm?sess_yr=2021&sess_ind=0&rc_body=H&rc_nbr=1283.

3634”).¹³ Much of the work of the Select Committee was utilized as a basis for this action. HR 240 PN 3634 contains seven articles of impeachment for “misbehavior in office in the nature of” (i) “dereliction of duty and refusal to enforce the law;” (ii) “obstruction of the House Select Committee investigation;” (iii) “violation of the Rules of Professional Conduct and Code of Judicial Conduct; specifically Rule 3.3 Candor Toward the Tribunal, Rule 8.4 Professional Misconduct, and Canon 2 of the Code of Judicial Conduct Impropriety and Appearance of Impropriety in the matter of *Robert Wharton v. Donald T. Vaughn*;” (iv) “violation of the Rules of Professional Conduct ... and ... Code of Judicial Conduct ... in the matter of *Commonwealth v. Pownall*;” (v) “violation of the Rules of Professional Conduct and Code of Judicial Conduct ... in the matter *In Re: Conflicts of Interest of Philadelphia District Attorney’s Office*;” (vi) “violation of victims rights;” and (vii) “violation of the Constitution of Pennsylvania by usurpation of the legislative function.”¹⁴

On November 18, 2022, House Speaker Bryan Cutler appointed Representatives Craig Williams, Tim Bonner, and Jared Solomon to serve as impeachment managers.¹⁵ The Select Committee recognizes the role of the Senate in this process going forward and that the Senate is taking appropriate next steps in the days ahead.

Since issuance of its Second Interim Report, the Select Committee has continued its work under the broad mandate of HR 216. This Third Report summarizes the Select Committee’s additional work and sets forth recommendations supported by the Select Committee’s investigative findings for consideration by the House in accordance with HR 216.¹⁶

As detailed in the Recommendations section below, the Select Committee first recommends that the House consider the following **measures to increase prosecution of violent crime, including gun crimes, in Philadelphia**:

- audit of the DAO’s use of General Funds appropriated to the Joint Local-State Firearm Task Force, i.e., the Gun Violence Task Force (“GVTF”);
- study by the Pennsylvania Commission on Sentencing (“Sentencing Commission”) of enforcement of Section 6108 of the Pennsylvania Uniform Firearms Act of 1955, 18 Pa.C.S. 18 Pa.C.S. § 6101, *et seq.*;

¹³ The General Assembly of Pennsylvania, House Resolution No. 240, Session of 2022, (Nov. 16, 2022), Printer’s No. 3634, <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2021&sessInd=0&billBody=H&billTyp=R&billNbr=0240&pn=3634>. <https://www.legis.state.pa.us/cfdocs/legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2021&sessInd=0&billBody=H&billTyp=R&billNbr=0240&pn=3634> (last visited Nov. 17, 2022).

¹⁴ HR 240 PN 3634, *supra* note 13.

¹⁵ *See supra* note 10.

¹⁶ To complete the record, the Select Committee attaches hereto as Attachments B and C, respectively, true and correct copies of all documents produced to the Select Committee by the Philadelphia Police Department (“PPD”) and the DAO in response to the subpoenas duces tecum duly issued by the Select Committee as detailed in the Second Interim Report.

- grant of concurrent jurisdiction to the Pennsylvania Attorney General (“AG”) to prosecute certain crimes committed in Philadelphia in violation of the Uniform Firearms Act (“VUFA offenses”);
- limitation of the DAO’s authority to disapprove VUFA charges;
- increased funding of technological advances to investigate and prosecute crime in Philadelphia;
- collaboration by the City of Philadelphia in the state’s construction of a new state-of-the-art crime lab in Harrisburg;
- funding of hazard pay for PPD officers; and
- study of the challenges faced by the PPD in its hiring and retention of officers.

In addition, the Select Committee recommends that the House consider the following **measures to improve the rights of crime victims**:

- study by the Legislative Budget and Finance Committee (“LBFC”) of funds allocated to the DAO for the servicing or compensation of crime victims;
- study of the process for victim registration with the Pennsylvania Office of Victim Advocate (“OVA”) to increase the OVA’s reach across the Commonwealth; and
- amendment of Pennsylvania’s Crime Victims Act (“CVA”), 18 P.S. § 11.101, *et seq.*, to include enforcement mechanisms aimed at improving victim notification.

Finally, the Select Committee recommends that the House consider the following **measures to ensure competence of prosecutors**:

- training mandates for new prosecutors, and
- amendment of the Pennsylvania Constitution to permit recall elections in Philadelphia.

The Select Committee is hopeful that the House finds the recommendations in this Third Report helpful in its ongoing efforts to improve public safety in the City of Philadelphia and its principal objective to improve the lives of all citizens of this Commonwealth.

DA KRASNER’S HINDRANCE OF COLLABORATION MUST STOP

The Select Committee begins this Third Report by stressing that the utility of the recommendations to follow, if implemented, will be directly impacted by the willingness of all participants in the criminal justice system, including DA Krasner, to serve in their roles with fidelity and to support the roles of other stakeholders.

The Select Committee concluded its Second Interim Report by emphatically stating that addressing the increase in crime in Philadelphia requires the cooperation and collaboration of all stakeholders who share in the responsibility of addressing public safety. Each participant in the system—the DAO, PPD, Mayor, Office of Attorney General (“OAG”), Defender Association, City Council, General Assembly, judiciary, etc.—has a unique and important role to play. The system does not work when a stakeholder such as the DAO forsakes its own role and undermines the roles of others.

Below are just a few examples of how DA Krasner, rather than cooperating within the confines of a balanced system, has perverted the role of DAO to undermine the PPD, vilify the OAG, and isolate the DAO from its allies in what should be a shared effort to combat crime. The Select Committee calls for an end to this abhorrent conduct, which has hindered the cross-office collaboration needed to address Philadelphia’s undeniable crisis of crime and gun violence.

A. DA Krasner Undermines the PPD

Both prior and subsequent to his election, DA Krasner has spoken out strongly against practices of city law enforcement. In an October 2015 interview, DA Krasner harkened back to the city’s policing environment in the 1970s, saying that former Mayor Frank Rizzo’s position regarding law enforcement was essentially: “We’re cops and we’re in charge of the money, the pensions, race relations[.]”¹⁷ According to DA Krasner, former Mayor Rizzo “took us to the bottom of the f---ing ocean. He was the strong man who dispenses with niceties like laws and constitutional protections and just gets the job done.”¹⁸ Incredibly, DA Krasner then compared the 2015 PPD to the PPD of forty years prior, stating that “we still have a police department that feels they can do pretty much whatever they want.”¹⁹

At the time of this 2015 interview, Commissioner Charles Ramsey led the PPD and was on the verge of retirement after 12 years of service to the people of Philadelphia. During his tenure, former Commissioner Ramsey earned many accolades, including selection as co-chair of President Barack Obama’s Task Force on 21st Century Policing.²⁰ It is troubling to the Select Committee

¹⁷ Jake Blumgart, *The Brutal Legacy of Frank Rizzo, the Most Notorious Cop in Philadelphia History*, *Vice*, (Oct. 22, 2015), <https://www.vice.com/en/article/kwxp3m/remembering-frank-rizzo-the-most-notorious-cop-in-philadelphia-history-1022>.

¹⁸ *Id.* (alteration added).

¹⁹ *Id.*

²⁰ See President’s Task Force on 21st Century Policing, *Final Report of the President’s Task Force on 21st Century Policing*, Washington, DC: Office of Community Oriented Policing Services, (May 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

that DA Krasner characterized the PPD under former Commissioner Ramsey as essentially unchanged from the brutal and thuggish practices seen under the Rizzo administration in the 1970s.

It is clear to the Select Committee that DA Krasner's views on today's PPD have not moderated over time, nor were his 2015 remarks a slip-of-the-tongue. Four years later, DA Krasner told the Los Angeles Times: "The culture that came out of Frank Rizzo was racist, brutal, toxic, tribal, and that long shadow still hangs over the [PPD] especially at the senior and supervisory levels."²¹ DA Krasner's comments then—and his conduct to this day—demonstrate little regard for developing the type of relationship necessary with the PPD to effectively fight crime.

B. DA Krasner Downplays the Need to Prosecute Violent Crime and Fails Victims of Crime

In a pre-election March 2017 interview, DA Krasner noted that "the DA has [a] lot of discretion, *including the ability to take an important offense and treat it as unimportant* so as not to jam the jails."²² The Select Committee notes a difference between treating low-level offenses differently than serious offenses, as opposed to treating "important" offenses as if they are "unimportant." It is the Select Committee's conclusion that treating serious crime as "unimportant" has directly contributed to the serious spike in crime across the City of Philadelphia under DA Krasner's administration.

The Philadelphia Inquirer shared this concern, going so far as to take the unusual step of endorsing DA Krasner's republican opponent in the 2017 district attorney race.²³ In a prescient editorial, the Inquirer warned that "voters should be concerned about [DA Krasner's] lack of prosecutorial experience – and mindset – needed to head an office whose job is to prosecute crime."²⁴

Upon election, rather than moderate his extreme positions, DA Krasner doubled down on them. In 2018, on a recruiting mission to the University of Chicago, DA Krasner told graduating law students that he was a "public defender with power."²⁵

²¹ Del Quentin Wilber, *Once tough-on-crime prosecutors now push progressive reforms*, Los Angeles Times, (Aug. 5, 2019), <https://www.latimes.com/politics/story/2019-08-02/once-tough-on-crime-prosecutors-now-push-progressive-reforms>.

²² Jon Marks, *Lawrence Krasner Taking a Swing at DA's Office*, Philadelphia Jewish Exponent, (Mar. 8, 2017), <https://www.jewishexponent.com/2017/03/08/lawrence-krasner-taking-swing-das-office/>.

²³ The Editorial Board, *Beth Grossman has the energy, strong background, and skills to be Philly's next DA*, Philadelphia Inquirer, (Oct. 15, 2017), <https://www.inquirer.com/philly/opinion/editorials/beth-grossman-has-the-energy-strong-background-and-skills-to-be-phillys-next-da-endorsement-20171015.html>.

²⁴ *Id.*

²⁵ Ben Austen, *In Philadelphia, a Progressive D.A. Tests the Power — and Learns the Limits — of His Office*, New York Times, (Oct. 30, 2018), <https://www.nytimes.com/2018/10/30/magazine/larry-krasner-philadelphia-district-attorney-progressive.html>.

The Select Committee heard concerns from victims and the families of victims that DA Krasner failed in his obligations relating to crime victims' rights. This concern is not a recent phenomenon, but rather an issue that has plagued the Krasner administration from the start. An April 2018 Philadelphia Inquirer article detailed multiple families who experienced violent crime and felt ignored during DA Krasner's first months in office.²⁶ DA Krasner callously dismissed these concerns as "growing pains" and fell back on hollow political rhetoric, stating: "Change is never easy ... and in these first 100 days we're very optimistic about the future."²⁷

Unfortunately, DA Krasner's optimism was not subsequently borne out in reality. As crime rates spiked in 2019, DA Krasner ignored warning signs and claimed increasing violence in the city was not his fault.²⁸

C. DA Krasner Vilifies the OAG

The Select Committee takes special note of a weeks-long tussle in 2019 between DA Krasner and AG, now Governor-Elect, Josh Shapiro. The situation clearly illustrates DA Krasner's destructive tendencies to:

- shift blame and deflect responsibility to others even when he is obviously wrong;
- use incendiary language toward prominent, respected members of the legal community without regard for the negative impact on his crucial relationships with those individuals; and
- isolate himself from individuals and organizations that should be natural allies to the DAO.

An August 14, 2019 article in the Philadelphia Inquirer outlines the remarkable situation that spurred some of the city's leading legal voices to speak out against DA Krasner's outlandish use of a "Nazi analogy [as] a joke about former prosecutors going to work for [AG] Shapiro."²⁹ Specifically, in joking with his staffers, DA Krasner reportedly referred "to some former city prosecutors who left or were fired when he took office as 'war criminals.'"³⁰ DA Krasner joked

²⁶ Chris Palmer, *Philly DA Larry Krasner is changing the way his office prosecutes killers. Not everyone agrees*, Philadelphia Inquirer, (Apr. 4, 2018), <https://www.inquirer.com/philly/news/crime/philadelphia-district-attorney-larry-krasner-homicide-prosecutions-lifers-anthony-voci.html>.

²⁷ *Id.*

²⁸ Tom MacDonald, *Philly DA says it's not his fault violence is getting worse*, WHYY, (Jun. 18, 2019), <https://whyy.org/articles/philly-da-says-its-not-his-fault-violence-is-getting-worse/>.

²⁹ Chris Brennan, *Philadelphia District Attorney Larry Krasner pushes back on critics of his 'war criminals' joke*, Philadelphia Inquirer, (Aug. 14, 2019), <https://www.inquirer.com/news/attorney-general-josh-shapiro-district-attorney-larry-krasner-dispute-nazi-analogy-20190814.html?outputType=amp>.

³⁰ *Id.*

that prosecutors hired by the AG “fled to ‘Paraguay,’ a reference to one of the South American countries where Nazis took refuge after World War II.”³¹

Nancy Baron-Baer, regional director of the Anti-Defamation League of Philadelphia, wrote to DA Krasner, expressing the League’s “disappointment in [his] recent use of a Holocaust analogy” to describe the AG’s staff, saying that the comments “demonstrate a lack of sensitivity to this unique tragedy in human history[.]”³² The AG called the DA’s “hateful speech” “reprehensible” and stressed that he is “incredibly proud” of his staff of “committed, talented prosecutors” with “the highest level of integrity.”³³ He said: “There is no place for comments like this in our society, let alone in a fellow law enforcement office.”³⁴

Bill Sasso, former chairman of Stradley Ronon who was recently selected by Governor-Elect Shapiro to chair his transition team, commented on the unfairness of DA Krasner’s suggestions that “these loyal public servants ‘fled’ to the [OAG], when in fact some of them were fired by [DA Krasner] given his lack of tolerance for opposing points of view.”³⁵ Stephen Cozen, chairman of Cozen O’Connor and then chairman (now part of the senior leaders council) of the USC Shoah Foundation, expressed that DA Krasner “needs to be considerably more careful in the future before he attributes those terms to folks who have good reputations as professionals.”³⁶ Ben Lerner, a senior judge in the Court of Common Pleas who once led the Defender Association and served in Mayor Jim Kenney’s administration, called Krasner’s comments “reckless and cruel.”³⁷ He said he did not find DA Krasner’s conduct surprising: “After all, this is not the first time he has used his office to trash the reputations of highly skilled, dedicated, and honorable former [assistant district attorneys (‘ADAs’)], some of whom he fired and some of whom left on their own to continue careers devoted to public service.”³⁸

The Select Committee sees no need to further elaborate on DA Krasner’s inexcusable suggestion that hard-working prosecutors who now work for the state’s highest law enforcement official may be compared to “war criminals,” and that the OAG shelters evildoers as Paraguay harbored German SS officers after World War II. The Select Committee condemns these remarks in the strongest manner possible. Obviously, such comments work against the atmosphere of trust and collaboration necessary between these two offices.

D. DA Krasner Isolates His Office from Natural Allies

As exemplified by his feud with the OAG described above, the Select Committee observes that DA Krasner tends to vilify and separate himself from key stakeholders who are seemingly natural allies, politically and professionally, to the DAO. To this point, the Select Committee takes note

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

of DA Krasner’s public “divorce” from the Pennsylvania District Attorney’s Association (“PDAA”), and his public feuds with the Mayor, several successive police commissioners, federal prosecutors, and even his own staff. The Select Committee heard from multiple individuals that DA Krasner’s go-it-alone approach not only results in a toxic work environment for his own employees, but directly contributes to a lack of cooperation and collaboration necessary for effective law enforcement and prosecution of crime. The resulting spike in crime during DA Krasner’s tenure is prima facie evidence of this issue.

E. DA Krasner Similarly Undermined and Vilified the Select Committee

The Select Committee recognizes that the role of district attorney is not for the faint of heart; at times, a district attorney needs to have sharp elbows. The Select Committee also recognizes that almost any successful legal effort, particularly the prosecution of criminal activity, requires collaboration between district attorney’s offices and other agencies and departments. It is concerning that DA Krasner treats both his perceived political enemies and natural allies with similar disdain. Indeed, his vilification of anyone outside his orbit extended even to the work of this Select Committee.

A week before the Select Committee held bipartisan hearings at the Navy Yard in South Philadelphia, DA Krasner addressed a group of his supporters at Mother Bethel AME Church. Speaking of the Select Committee, Krasner opined: “I knew some of them wanted to redo the Civil War. Do they want to redo the Revolutionary War, too? Is that what is also going on here? I certainly hope not.”³⁹ This was not an isolated incident.

In an October 21, 2022 letter to the Select Committee, DA Krasner asserted the motives of the Select Committee were “paternalistic, offensive, and racist.”⁴⁰ This rhetoric, directed toward a bipartisan committee of the Pennsylvania House of Representatives, including two members from the City of Philadelphia, exemplifies a temperament wholly inconsistent with what is required of the district attorney for the largest city and economic hub of the Commonwealth.

F. DA Krasner Ignores Reality and Claims Philadelphia Does Not Have a Crisis of Crime

In December 2021, in remarks widely reported in both local and national press, DA Krasner boldly proclaimed: “Basically, we don’t have a crisis of lawlessness, we don’t have a crisis of crime, we

³⁹ Tom MacDonald, *Philadelphia District Attorney Larry Krasner mounts defense against impeachment effort*, *WHYY, WITF*, (Sept. 20, 2022), <https://www.witf.org/2022/09/20/philadelphia-district-attorney-larry-krasner-mounts-defense-against-impeachment-effort/>.

⁴⁰ Lawrence S. Krasner, *DA Krasner Statement to PA GOP Lawmakers Determined to Impeach Him*, (Oct. 21, 2022), <https://phillyda.org/news/da-krasner-statement-to-pa-gop-lawmakers-determined-to-impeach-him/>.

don't have a crisis of violence and that is a category that includes gun violence.”⁴¹ DA Krasner made these remarks as Philadelphia saw a yearly record of 561 homicides.

Press reports indicated other city officials saw things differently. “We absolutely have an issue with violent crime, with our non-fatal shootings, with our homicides — not just in 2021 but since I've been here,” said PPD Commissioner Danielle Outlaw.⁴² “We certainly are in a gun crisis situation, no doubt about it,” added Mayor Jim Kenney.⁴³

Unfortunately, DA Krasner has routinely demonstrated that he places his failed policies above public safety, all the while maintaining a fanciful position that his failure to prosecute criminal activity has not contributed to the statistically significant historic rise in violent crimes. DA Krasner displays an Orwellian tendency to ignore problematic facts, blame others for his evident failures, and paint a rosy picture that contradicts the grim reality obvious to those around him. This is not hyperbole. As rates of violent crime inarguably increased, DA Krasner told Temple University students in 2019 that his prosecutorial policies were an “experiment” that are “effective at keeping crime down and healing society.”⁴⁴

It is clear to the Select Committee that the crime and chaos brought forth as a direct result of DA Krasner's administration will continue unabated until he is no longer serving as District Attorney of Philadelphia. The Select Committee is not alone in this view. A blistering December 2021 op-ed penned by former Philadelphia Mayor Michael Nutter comes to a similar conclusion.⁴⁵

As someone who has lived the experience of a black man in Philadelphia and worked at the highest level of city government, I see that police and judges are trying to keep Philadelphians safe, but Krasner is not. No matter what he says, this city is experiencing a crisis of violence and murder. If he can't see that, he is unfit to serve the residents of Philadelphia.

⁴¹ Shawnette Wilson. *'We don't have a crisis of crime': Krasner says no reason for people to be fearful when they come to Philly*. Fox29 Philadelphia, Dec. 6, 2021, <https://www.fox29.com/news/we-dont-have-a-crisis-of-crime-krasner-says-no-reason-for-people-to-be-fearful-when-they-come-to-philly>.

⁴² Mike D'Onofrio, *Krasner faces backlash over comments about violence in Philadelphia*, *Axios*, (Dec. 9, 2021), <https://www.fox29.com/news/we-dont-have-a-crisis-of-crime-krasner-says-no-reason-for-people-to-be-fearful-when-they-come-to-philly>.

⁴³ *Id.*

⁴⁴ Olivia O'Donnell, *DA Larry Krasner visits Temple's Main Campus*, *Temple-News.com*, (Apr. 7, 2019), <https://temple-news.com/da-larry-krasner-visits-temples-main-campus/>.

⁴⁵ Michael Nutter, *If Philly DA can seriously claim we're not facing a crisis of murders, then he and his white wokeness must go*, *New York Post*, (Dec. 10, 2021), <https://nypost.com/2021/12/10/philly-da-refuses-to-accept-citys-crisis-of-lawlessness/> (hyperlink removed).

RECOMMENDATIONS

The Select Committee reiterates that the within recommendations require willing collaboration of all participants in the criminal justice system with the shared responsibility for ensuring the safety of Philadelphia residents and visitors. The Select Committee remains hopeful that its work has underscored this critical need and that such cross-office cooperation does take place.

I. RECOMMENDATIONS TO INCREASE PROSECUTION OF VIOLENT CRIME, INCLUDING GUN CRIMES, IN PHILADELPHIA

A. Audit the DAO’s Use of GVTF Funds

The GVTF is a joint local-state taskforce funded by annual General Fund appropriations and charged with combatting the unlawful sale, transfer, possession, use, manufacture and control of firearms. The DAO is a member of the GVTF.

As reflected on the DAO’s Public Data Dashboard, there has been a sharp and steady increase in firearm violations, including illegal possession incidents, from 1,138 incidents in 2015 to 3,224 incidents in 2021:⁴⁶

Data: YTD Count of Incidents by Reported Offense Category

Offense Category	2015 YTD	2016 YTD	2017 YTD	2018 YTD	2019 YTD	2020 YTD	2021 YTD
Firearm Violations (including Illegal Possession)	1,138	1,669	1,829	1,914	2,192	2,900	3,224

As of only November 10, 2022, there have already been 2,725 firearm violations this year.⁴⁷ Thus, *Philadelphia is on track to exceed 3,000 firearm violations for the second year in a row.*

Despite this alarming trend, guilty dispositions of VUFA cases under DA Krasner’s administration dramatically declined from 80% in 2017 to 66% in 2020:⁴⁸

⁴⁶ Philadelphia District Attorney’s Office, Public Data Dashboard, *Incidents*, (Nov. 10, 2022), at Firearms, https://data.philadao.com/Incidents_Report.html (last visited Nov. 11, 2022).

⁴⁷ *Id.*

⁴⁸ September 30, 2022 Testimony, PowerPoint presentation by Mark H. Bergstrom of the Pennsylvania Commission on Sentencing (“Sentencing Commission Presentation”), at 33, attached to the Second Interim Report as Attachment F (emphasis added).

		Non-Pending Cases	Percent Guilty	Percent Not Guilty	Percent Withdrawn	Percent Nolle Prossed	Percent Dismissed	Other
First Class	2015	339	88%	4%	0%	7%	0%	1%
	2016	1,428	84%	4%	0%	10%	1%	1%
	2017	2,042	80%	5%	0%	12%	1%	2%
	2018	2,202	79%	4%	0%	13%	1%	3%
	2019	1,646	69%	7%	0%	18%	2%	4%
	2020	767	66%	5%	0%	21%	4%	4%
Second Class	2015	206	84%	4%	1%	9%	0%	1%
	2016	731	84%	5%	0%	9%	0%	2%
	2017	847	76%	9%	1%	13%	0%	1%
	2018	848	79%	6%	2%	10%	1%	1%
	2019	876	78%	7%	1%	12%	0%	2%
	2020	549	72%	6%	1%	18%	0%	3%
Statewide	2015	1,414	88%	2%	1%	7%	1%	1%
	2016	4,653	86%	3%	0%	8%	1%	2%
	2017	5,595	84%	4%	1%	9%	1%	2%
	2018	5,839	83%	3%	1%	9%	1%	3%
	2019	5,393	80%	4%	1%	11%	1%	3%
	2020	3,412	78%	3%	1%	12%	2%	3%

In that same period, the rate of the DAO’s nolle pros dispositions of VUFA cases (i.e., decisions by the DAO not to prosecute) increased from 12% in 2017 to 21% in 2020—disproportionately higher rates than those seen in other counties and statewide:⁴⁹

Court of Common Pleas, Percent Nolle Prossed out of non-pending cases [2015-2020]

	Statewide	First Class	Second Class	Second Class A	Third Class	Fourth Class	Fifth-Eighth Class	Statewide (no First Class)
2015	7%	7%	9%	2%	6%	8%	9%	7%
2016	8%	10%	9%	4%	7%	8%	9%	7%
2017	9%	12%	13%	4%	5%	11%	8%	8%
2018	9%	13%	10%	4%	5%	11%	8%	7%
2019	11%	18%	12%	3%	8%	8%	7%	8%
2020	12%	21%	18%	5%	8%	11%	8%	10%
Total	10%	13%	12%	4%	6%	10%	8%	8%

With these case dispositions came an increase in shooting incidents, with non-fatal shootings nearly doubling from 2017 to 2021, and fatal shooting having more than doubled.⁵⁰

Data: YTD Count of Incidents by Reported Offense Category

Offense Category	2015 YTD	2016 YTD	2017 YTD	2018 YTD	2019 YTD	2020 YTD	2021 YTD
Homicide: Shooting	187	185	206	222	261	361	416
Homicide: Other	52	49	62	60	42	63	58
Non-Fatal Shooting	824	870	821	922	982	1,496	1,542

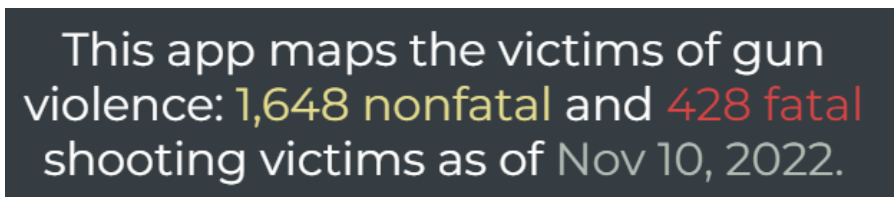
⁴⁹ Data provided by the Pennsylvania Commission on Sentencing to the Select Committee on October 11, 2022, attached to the Second Interim Report as Attachment G (emphasis added).

⁵⁰ *Supra* note 46 at Violent (emphasis added).

Despite this, as reported on the DAO’s Public Data Dashboard as of November 13, 2022, *the DAO has withdrawn or dismissed half of all firearm possession cases this year*.⁵¹

Offense Category	Disposition Type	2015 YTD	2016 YTD	2017 YTD	2018 YTD	2019 YTD	2020 YTD	2021 YTD	2022 YTD
All Firearm Possession	Total	100%	100%	100%	100%	100%	100%	100%	100%
	Dismissed/Withdrawn/Etc	25%	29%	31%	34%	46%	47%	60%	50%

The Controller’s “Mapping Philadelphia Gun Violence Crisis” page reports that *incidents of both fatal and non-fatal shootings this year, as of November 10, 2022, already exceed all of 2021*.⁵²



Meanwhile, from fiscal years 2018-2019 through 2021-2022, General Fund appropriations to the GVTF totaled more than \$25 million USD.

The Select Committee understands that the OAG distributes GVTF funds to the DAO on a monthly basis per the DAO’s requests for reimbursement for employee compensation and other miscellaneous expenditures. The Select Committee has reviewed certain of the DAO’s reimbursement requests and the OAG’s distributions to the DAO. It is unclear to the Select Committee what degree of transparency, if any, exists between the OAG and the DAO with respect to the work done by DAO employees whose salaries are paid, in whole or in part, by GVTF funds. Accordingly, the Select Committee’s first recommendation is that the House consider urging the Auditor General to audit the DAO’s use of GVTF funds.

To that end, on October 24, 2022, the Chairman of the Select Committee introduced House Resolution No. 239, Printer’s No. 3590 (“HR 239”), to, among other things, “urge the Auditor General to conduct a forensic audit of the use and expenditure of State funds,” including “any improprieties, negligence or misuse of funds,” “by the [DAO] and any other money that was appropriated to the [GVTF] in fiscal years 2018-2019, 2019-2020, 2020-2021 and 2021-2022[.]”⁵³ HR 239 was referred to the Judiciary Committee that day and was reported as committed by the

⁵¹ Philadelphia District Attorney’s Office, Public Data Dashboard, *Case Outcomes* (Nov. 13, 2022), at Firearms/Rates, https://data.philadao.com/Case_Outcomes_Report.html (last visited Nov. 14, 2022).

⁵² Office of the Controller, Mapping Philadelphia’s Gun Violence Crisis, (Nov. 10, 2022), <https://controller.phila.gov/philadelphia-audits/mapping-gun-violence/#/?year=2022&map=11.00%2F39.98500%2F-75.15000> (last visited Nov. 11, 2022).

⁵³ Representative John Lawrence, House Resolution No. 239, Session of 2022, (Oct. 24, 2022), Printer’s No. 3590, at 3:12-19, <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2021&sessInd=0&billBody=H&billTyp=R&billNbr=0239&pn=3590>.

Judiciary Committee on October 25, 2022.⁵⁴ The Select Committee recommends that a reintroduced version of HR 239 be considered in the first legislative session of 2023.

B. Study Enforcement of Section 6108 of the Uniform Firearms Act

Section 6108 of the Uniform Firearms Act deals with the illegal possession of firearms in Philadelphia. The Select Committee notes that some have advocated for new gun laws in the City of Philadelphia, and in that light, a review of how existing Philadelphia-specific laws are being enforced is warranted.

There is disagreement in the Philadelphia law enforcement community about the value of prosecuting individuals under Section 6108. While Philadelphia saw a record number of homicides and non-fatal shootings in early 2022, DA Krasner shockingly asserted: “*We do not believe that arresting people and convicting them for illegal gun possession is a viable strategy to reduce shootings.*”⁵⁵

Other key stakeholders do not share DA Krasner’s views. Mayor Jim Kenney stated “individuals carrying guns illegally should be held accountable for that choice[.]”⁵⁶ Following a widely reported shooting on South Street, Kenney added: “It’s gotten to the point where there’s no price to pay for carrying illegal guns, so people carry them because they don’t think anything is going to happen[.]”⁵⁷

PPD Commissioner Danielle Outlaw echoed Mayor Kenney’s sentiments, noting the record number of illegal guns taken off the street by the PPD in 2021 and 2022: “There has to be consequences for those carrying illegal guns or [who] are using them in ways that are not in alignment with what the law says[.]”⁵⁸

Upon review of statistics from the DAO’s website, the Select committee observes that the number of individuals charged with possession of a firearm without a license varies widely year-over-

⁵⁴ Pennsylvania House of Representatives, House Committee Roll Call Votes, HR239 PN3590, (Oct. 25, 2022), <https://www.legis.state.pa.us/cfdocs/legis/RCC/PUBLIC/listVoteSummaryH.cfm?sYear=2021&sInd=0&cteeCde=24&theDate=10/25/2022&RollCallId=2098>.

⁵⁵ Todd Shepherd, *Philly Democrats remain largely silent on Krasner non-prosecution stance for illegal guns*, *Broad + Liberty*, (Jun. 15, 2022), <https://broadandliberty.com/2022/06/15/philly-democrats-remain-largely-silent-on-krasner-non-prosecution-stance-for-illegal-guns/> (emphasis added).

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* (citing Matt O’Donnell and Niki Hawkins, *Police Commissioner Danielle Outlaw on guns, South Street mass shooting and declining enrollment*, *6ABC Action News, WPVI-TV*, (Jun. 13, 2022), <https://6abc.com/commissioner-danielle-outlaw-philadelphia-gun-violence-south-street-mass-shooting-illegal-firearms-sales/11945033/>).

year. However, the dismissed/withdrawal rate has dramatically increased under the Krasner administration, from 24% in 2015 to 62% in 2021.⁵⁹

The Select Committee views DA Krasner’s stated position that he does “not believe that arresting people and convicting them for illegal gun possession is a viable strategy to reduce shootings” as reckless and untenable. The Select Committee believes DA Krasner’s words carry weight, and criminal elements take note when he sends the message that illegal possession of firearms will be tolerated in the city.

The Select Committee believes this warrants further review and recommends that the Sentencing Commission study current and past enforcement of Section 6108 and how that enforcement, or lack thereof, impacts overall crime in the city.

C. Grant the AG Concurrent Jurisdiction to Prosecute Certain VUFA Offenses

As explained elsewhere in this Third Report, and as extensively detailed in the Second Interim Report, the Sentencing Commission has identified troubling trends with respect to the prosecution of VUFA cases by DA Krasner’s administration.

House Bill 1614, Session of 2019, which became Act 58 of 2019 (“HB 1614”), amended Uniform Firearms Act Sections 6105 (Persons not to possess, use, manufacture, control, sell or transfer firearms) and 6111 (Sale or transfer of firearms) to confer concurrent jurisdiction on the AG to prosecute violations of those Sections in First Class cities and counties (i.e., Philadelphia), “where the [AG] has operated a joint local-state firearm task force[.]”⁶⁰ Under subsection (d.1) of amended Sections 6105 and 6111, the AG had “the authority to investigate and institute criminal proceedings for a violation of” those Sections in “any case instituted within two years after the effective date of” Act 58 on July 2, 2019.⁶¹ This authority, which expired July 2, 2021, was expressly “[i]n addition to the authority conferred upon the [AG] by the act of October 15, 1980 (P.S. 950, No. 164), known as the Commonwealth Attorneys Act,”⁶² 71 P.S. § 732-101, *et. seq.*

Under the Commonwealth Attorneys Act, the AG may supersede the district attorney in limited cases. Specifically, Section 732-205(4) provides, in pertinent part:⁶³

(4) The [AG] may petition the court having jurisdiction over any criminal proceeding to permit the [AG] to supersede the district attorney in order to prosecute a criminal action or to institute criminal proceedings. ... Supersession shall be ordered if the Attorney General establishes by a preponderance of the evidence

⁵⁹ See *supra* note 51.

⁶⁰ The General Assembly of Pennsylvania, House Bill No. 1614, Session of 2019 (June 24, 2019), <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2019&sessInd=0&billBody=H&billTyp=B&billNbr=1614&pn=2214>.

⁶¹ 18 Pa.C.S. §§ 6105(d.1) & 6111(d.1).

⁶² *Id.*

⁶³ 71 P.S. § 732-205(4).

that the district attorney has failed or refused to prosecute and such failure or refusal constitutes abuse of discretion.

In addition, Section 205(5) permits a presiding judge, with “reason to believe that the case is a proper one for the intervention of the Commonwealth,” the right to request that the AG represent the Commonwealth in place of the district attorney to investigate and charge a defendant.⁶⁴

These prior amendments to the Uniform Firearms Act and provisions of the Commonwealth Attorneys Act reflect limitations on the prosecutorial discretion of a district attorney in certain cases, with a mechanism to transfer that discretion to the AG. Given the severe spike in crime occurring in Philadelphia and the increasingly high rate of nolle prossed, withdrawn, and dismissed VUFA cases in the city, the Select Committee recommends that the House consider a bill, similar to HB 1614, extending the AG’s concurrent jurisdiction to prosecute all cases in which violations of Sections 6105 and 6111 of the Uniform Firearms Act are charged. The Select Committee further recommends that the House urge the AG to exercise that concurrent jurisdiction in cases nolle prossed by the DAO, as a critical measure to combatting the gun crisis facing Philadelphians.

To this latter point, the Select Committee understands that, historically, the AG has not frequently, if at all, exercised concurrent jurisdiction to prosecute violations of Sections 6105 and 6111 in Philadelphia, or otherwise superseded a district attorney under the Commonwealth Attorneys Act. Just this month, nine people were shot on South Street in Philadelphia, nearly marking the 60th day in 2022 that the city experienced a shooting of 10 or more people.⁶⁵ In December 2021, DA Krasner insisted that there is no gun crisis in Philadelphia: “Basically, we don’t have a crisis of lawlessness, we don’t have a crisis of crime, we don’t have a crisis of violence and that is a category that includes gun violence[.]”⁶⁶ DA Krasner later apologized for that statement, saying the he “unintentionally hurt people” with his words.⁶⁷ Regardless of his intent, the fact remains that crime is an increasing issue for many Philadelphians. If DA Krasner is not up to the task, other officials with the power, authority, and willingness to prosecute criminals must do so.

D. Urge the Judiciary to Limit the DAO’s Authority to Disapprove VUFA Charges

In Philadelphia, the DAO must approve all criminal charges, including VUFA offenses, before they are filed.⁶⁸ This prerequisite, which also exists in six other counties in Pennsylvania that

⁶⁴ *Id.* § 732-205(5).

⁶⁵ VOA News, *9 Shot in Philadelphia*, *Voice of America*, (Nov. 6, 2022), <https://www.voanews.com/a/shot-in-philadelphia/6822331.html>.

⁶⁶ Wilson, *supra* note 41.

⁶⁷ *DA Larry Krasner delivers apology after comments that downplayed crime*, *Fox 29 Philadelphia*, (Dec. 14, 2021), <https://www.fox29.com/news/da-larry-krasner-delivers-apology-after-comments-that-downplayed-crime>.

⁶⁸ Phil. Cnty. Pa. *507 (2014).

similarly require approval by the district attorney of all criminal complaints,⁶⁹ was established in accordance with Pennsylvania Rule of Criminal Procedure 507 (“Rule 507”), which states that a “district attorney of any county *may* require that criminal complaints, arrest warrant affidavits, or both filed in the county by police officers, as defined in these rules, have the approval of an attorney for the Commonwealth prior to filing.”⁷⁰

Prior to DA Krasner’s administration, the DAO provided a certification to the Philadelphia Court of Common Pleas stating that DAO approval of all criminal charges is required, and the Court, in accordance with Rule 507, then promulgated Philadelphia Local Rule of Criminal Procedure 507 (“Local Rule 507”).⁷¹ Local Rule 507, titled “Approval of Police Complaints and Arrest Warrant Affidavits by the Attorney for the Commonwealth,” provides that any misdemeanor or felony “shall not be submitted to any judicial officer unless it has first been reviewed and approved by an attorney for the Commonwealth.”⁷² Where a district attorney disapproves of a police complaint, arrest warrant, or both, the attorney must provide the police officer a written notice regarding the reason for the disapproval.⁷³

The Select Committee recognizes that the judiciary has the exclusive authority to prescribe and adopt the Pennsylvania Rules of Criminal Procedure and the local Philadelphia Rules of Criminal Procedure.⁷⁴ Given the seriousness of the gun violence crisis in Philadelphia, the Select Committee recommends that the House consider urging the Pennsylvania Supreme Court to consider amending Rule 507 to limit the DAO’s authority to disapprove the filing of VUFA charges recommended by the PPD. By this act, the judiciary, as key stakeholders in the criminal justice system, could remove a roadblock that is shielding Philadelphia criminals with guns from accountability at the expense of the safety of law-abiding citizens.

E. Increase Funding of Technological Advances to Investigate and Prosecute Crime in Philadelphia

At its public hearings in Philadelphia in September 2022, the Select Committee heard the pleas of Nakisha Billa, a mother who tragically lost her teenage son, Dominic Billa, to senseless gun violence at a Philadelphia mall earlier this year. Ms. Billa recommended increased funding of technological advances to improve investigation and prosecution of crime.

⁶⁹ See Pennsylvania Commission on Sentencing, *A Comprehensive Guide to Violations of Pennsylvania’s Uniform Firearms Act*, (2022), at 11-12, attached to the Second Interim Report as Attachment D.

⁷⁰ Pa. R. Crim. P. 507(A) (emphasis added).

⁷¹ *Supra* note 70 at Rule 507(B).

⁷² *Supra* note 68 at Local Rule 507.

⁷³ *Supra* note 68 at Local Rule 507(C).

⁷⁴ See 42 Pa.C.S. § 1722 (Adoption of administrative and procedural rules).

The Select Committee is aware of joint public/private partnerships in a number of cities aimed at combatting crime with technology. One example is Project Green Light in Detroit.⁷⁵

Project Green Light Detroit

On January 1st of 2016, the Detroit Police Department (DPD) partnered with eight gas stations that have installed real-time camera connections with police headquarters as part of a ground-breaking crime-fighting partnership between local businesses, the City of Detroit and community groups called "Project Green Light Detroit."

This project is the first public-private-community partnership of its kind, blending a mix of real-time crime-fighting and community policing aimed at improving neighborhood safety, promoting the revitalization and growth of local businesses, and strengthening DPD's efforts to deter, identify, and solve crime. See a [map](#) of all current Project Green Light Detroit partners.

According to the Detroit Police Department's website:⁷⁶

All Project Green Light Detroit participants install high-definition (1080p) cameras and upgrade to high-speed network connections capable of allowing for consistent video streaming to DPD. Participants also agree to provide adequate lighting on all parts of their properties — and to making other improvements as needed to ensure that their businesses are customer-friendly, safe, and inviting.

Each participant purchases and installs external Project Green Light Detroit signage, including metal flag signs, decals at the top of their doors, and physical green lights — all to signify to customers and community members that they are Project Green Light Detroit participants.

As part of Project Green Light Detroit, DPD and the City have committed to devote staff to effectively receive, monitor, and analyze video feeds from Project Green Light Detroit participants in the department's state-of-the-art Real-Time Crime Center.

Baltimore's CitiWatch Community Partnership is similar:⁷⁷

⁷⁵ City of Detroit, Project Green Light, <https://detroitmi.gov/departments/police-department/project-green-light-detroit#:~:text=This%20project%20is%20the%20first,%2C%20identify%2C%20and%20solve%20crime> (last visited Nov. 14, 2022).

⁷⁶ *Id.*

⁷⁷ Baltimore Police Department, CitiWatch Community Partnership Overview, <https://www.baltimorepolice.org/community/citiwatch-community-partnership-overview> (last visited Nov. 14, 2022).

CITIWATCH COMMUNITY PARTNERSHIP OVERVIEW

CitiWatch is an innovative public-private partnership allowing residents and small business owners to assist the Baltimore Police Department and other public safety agencies by sharing important video footage. This helps save valuable time and resources and strengthens neighborhoods by deterring crime, encouraging community-law enforcement coordination, and supporting criminal apprehension. We believe that strong neighborhoods form the backbone of a vibrant Baltimore. By joining the CitiWatch Community Partnership you can help share a supportive message with your community and put criminals on notice: "Our residents and small businesses value public safety; we are partnering with the Baltimore Police Department and other public safety agencies to make our neighborhood safer and promote quality of life."

According to the Baltimore Police Department's website:⁷⁸

The Community Partnership is a voluntary registry of private surveillance systems that will enhance public safety response with video evidence when a crime or quality of life disruption occurs. Joining the Community Partnership and Baltimore City's public safety agencies in the effort to collaboratively improve quality of life shows your commitment to safer communities and an improved Baltimore. The Community Partnership is designed to encourage cooperation and communication between neighborhoods, business owners, and the City's public safety agencies.

Certain participants are eligible for a camera rebate or voucher.⁷⁹

The Select Committee recommends that the House consider legislation to fund a grant supporting technological advances to improve investigation and prosecution of crime in Philadelphia, including, for example, financial incentives to encourage collaboration between the PPD and private business owners/community members. The Select Committee is aware of the PPD's current SafeCam program, which encourages community members to register their personal security cameras with the PPD:



⁷⁸ *Id.*

⁷⁹ *Id.*

The Select Committee does not have visibility into the level of participation in this voluntary program or any analyses of its success. However, it is conceivable that participation could be improved by state funding to absorb some of the costs to participants of their purchase/installation of cameras and to the PPD of its receipt, monitoring, and analysis of private video feeds.

The Select Committee further recommends that the House consider increased funding of crimes labs servicing Philadelphia, including, for example, increasing state funding to the PPD's Office of Forensic Science and/or the Lima Regional Laboratory (if that state lab services the City).

F. Urge the City of Philadelphia to Collaborate in the State's Construction of a New State-of-the-Art Crime Lab in Harrisburg

The Select Committee is aware of plans to construct a new state crime laboratory on the grounds of the former Harrisburg State Hospital.⁸⁰ This effort will consolidate the state's disparate and outdated lab facilities into a centralized location, with preliminary plans to jointly service the Pennsylvania Department of Agriculture, Department of Environmental Protection, Department of Health, and State Police. Press reports indicate that plans for this new, state-of-the-art facility will begin in earnest in early 2023.

The Select Committee is also aware of concerns, including those expressed by DA Krasner, that Philadelphia needs additional laboratory resources to fight crime. The construction of a new state laboratory provides a timely and cost-effective opportunity to address these concerns. The Select Committee recommends that the House urge the City of Philadelphia to coordinate with the Governor's Office and the Department of General Services to procure space and resources at this new facility. Rather than construct a duplicative offering in Philadelphia, collaborating with state agencies on a cutting-edge facility offers a rare opportunity that should not be missed. The Select Committee encourages the Governor to ensure the bidding process for this new lab, and any plans developed to construct this new facility, take into consideration the current and future needs of the City of Philadelphia, in addition to those presented by the four state agencies currently involved in the project.

G. Fund Hazard Pay to PPD Officers

PPD Directive 6.7 governs, among other things, when PPD on-duty personnel performing patrols must wear a ballistic or protective vest.⁸¹ Specifically, Appendix A of Directive 6.7 states that "[a]ll sworn personnel on-duty and performing a patrol, special patrol, investigatory function,

⁸⁰ See Harri Leigh, *State official announce new plan to redevelop Harrisburg State Hospital*, FOX43, (Nov. 22, 2022), <https://www.fox43.com/article/news/local/harrisburg-state-hospital-redevelopment/521-d6db1365-8bff-4c29-a66a-879379196dc3>.

⁸¹ PPD Directive 6.07, Uniforms and Equipment, at Appendix A, https://www.phillypolice.com/accountability/index.html?_ID=110&_ClassName=CapPage#!#directives (last visited Nov. 17, 2022).

including pre-planned high risk incidents, will wear their city-issued ballistic/protective vest,” subject to certain exemptions, which are redacted due to law enforcement sensitive information.⁸²

The U.S. Department of Labor defines hazard pay as “additional pay for performing hazardous duty or work involving physical hardship. Work duty that causes extreme physical discomfort and distress which is not adequately alleviated by protective devices is deemed to impose a physical hardship.”⁸³ It is the Select Committee’s opinion that, in the current high-crime Philadelphia environment, PPD officers required to wear ballistic/protective vests pursuant to the PPD directives are performing hazardous duties beyond that for which they are currently compensated. Accordingly, and to aid in the PPD’s retention and hiring of officers at this time of great need, the Select Committee recommends that the House consider a bill to temporarily fund a grant to provide hazard pay for PPD officers subject to Appendix A of PPD Directive 6.7.

H. Study the PPD’s Hiring and Retention Challenges

As noted in the Second Interim Report, on October 18, 2022, prior Philadelphia Controller (now mayoral candidate) Rebecca Rhynhart published a “Review and Analysis of the Philadelphia Police Department and Other Related Police Spending” (the “PPD Review”), prepared in response to a request by the Philadelphia City Council’s Police Reform Working Group that the Controller’s Office audit the PPD’s spending and resource allocation.⁸⁴ The Select Committee notes the following key findings:⁸⁵

- The “PPD’s staffing levels have decreased significantly in recent years, from 6,590 filled uniform positions at the end of FY 2019 to 5,983 at the end of FY 2022.”
- “Based on recent attrition and recruiting trends, this total is likely to continue to decrease and could fall below 5,200 by the end of FY 2025 if the department does not increase its recruitment and retention of officers.”
- “The number of officers available for duty is further reduced by officers who are out on injured on duty (IOD) claims, which have more than doubled since FY 2018. During the fourth quarter of FY 2022, there were [sic] an average of 572 officers unavailable for duty as the result of an IOD claim.”
- The PPD does not appear to perform analyses to identify how many positions (officers or civilians) or hours it requires each year to meet its public safety goals, which is “hindering [the] PPD’s ability to determine the total number of positions needed to respond to the needs of the community.”

⁸² *Id.*

⁸³ U.S. Department of Labor, Hazard Pay, <https://www.dol.gov/general/topic/wages/hazardpay> (last visited Nov. 11, 2022).

⁸⁴ Rebecca Rhynhart, *Review and Analysis of the Philadelphia Police Department and Other Related Police Spending*, (Oct. 18, 2022), <https://controller.phila.gov/philadelphia-audits/ppdreview/#/executive-summary>.

⁸⁵ *Id.*

- “In FY 2021 and FY 2022, the number of officers available for patrol declined significantly, but these declines were not uniformly distributed across the city. The East division, which includes the city’s Kensington neighborhood, experienced the largest overall decline in patrol deployment, with FY 2022’s total at 78% of its FY 2017 level. Patrol deployment in the Central division, which includes Center City, experienced the smallest decline, recovering to 92% of its FY 2017 level by FY 2022.”

Ms. Rhyhart made a number of recommendations on ways the “PPD can allocate resources based on the needs of the people and communities it serves, as well as make organization and operational improvements,” two of which, related to PPD staffing, are quoted below:⁸⁶

- “PPD should establish the number of people and amount of labor required to effectively operate within each of PPD’s districts and units and PPD should develop an understanding of the responsibilities of each of its employees. By creating formalized job descriptions, PPD can create consistency in roles and responsibilities throughout the department. This will also allow PPD to better understand the resources needed throughout the various districts and units within the department, as well as what roles must be staffed by sworn personnel, and those that could be considered for civilianization.”
- “PPD should develop continual monitoring systems and community feedback mechanisms to ensure staffing and deployment of officers in each district is adequate for, and informed by, the evolving needs of the community.”

The Select Committee recommends further investigation regarding the PPD’s hiring and retention of officers to identify potential measures for improving staffing levels.

II. RECOMMENDATIONS TO IMPROVE CRIME VICTIMS’ RIGHTS

The CVA addresses a prosecutor’s required notice to victims. The Select Committee’s investigation identified the failure of witnesses and victims to appear for court proceedings as a significant reason for the ultimate withdrawal or dismissal of charges. Former ADAs have recommended that the technology for tracking and notifying witnesses and victims is lacking and that a more robust reminder system for notice could address this issue. In addition, some interviewees noted that there are no enforcement mechanisms in the CVA to ensure proper victim notification. The Select Committee makes the below recommendations to improve crime victims’ rights.

A. Study Funds Allocated to the DAO for the Servicing or Compensation of Crime Victims

As noted above, on October 24, 2022, the Chairman of the Select Committee introduced HR 239 “urg[ing] the Auditor General to conduct a forensic audit of the use and expenditure of State funds

⁸⁶ *Id.*

by the [DAO.]”⁸⁷ HR 239 also contemplated the House’s direction of the LBFC, with the as-needed assistance of the Pennsylvania Commission on Crime and Delinquency, “to conduct a comprehensive study of the Federal, State and city funds and any grants allocated to or under the direction or control of the [DAO] for the servicing or compensation of crime victims and how these funds have been spent and [to] prepare a report of its findings . . . to the House of Representatives within nine months of the adoption of” HR 239.⁸⁸ The Select Committee again recommends that a reintroduced version of HR 239 be considered in the first legislative session of 2023.

B. Study the Process for OVA Registration to Increase the OVA’s Reach

The OVA is the state agency “with the authority and duty to advocate for the rights and needs of crime victims.”⁸⁹ As explained on the OVA’s website:⁹⁰

In Pennsylvania, crime victims have rights. In order to receive the range of rights available to you, you should register with the [OVA]. . . .

Primarily, your rights include the option to receive various notifications about the status of the offender and the option to provide input to the PA Parole Board if/when the offender becomes parole eligible.

* * *

Registration with the OVA is voluntary and confidential.

To register with the OVA, a person must complete a form available on the OVA’s website and return it to the OVA, either by email to RA-PMOVARegistration@pa.gov or mail to 1101 S. Front Street, Suite 5200, Harrisburg, PA 17104.⁹¹ Thus, it appears that to register a crime victim must be made aware of the registration process and either have access to a computer or to someone who can facilitate registration. The Registration Form provides that “[v]ictims of crime who register with OVA have access to a myriad of services and programs, as well as the right to receive notification about the movement of their offender throughout the criminal justice system.”⁹² Thus, awareness of and access to the OVA registration process, while not required, is essential to the rights afforded to crime victims in Pennsylvania.

⁸⁷ HR 239, *supra* note 53 at 3:12-14.

⁸⁸ *Id.* at 2:27-3:11.

⁸⁹ Office of Victim Advocate, About OVA, <https://www.ova.pa.gov/AboutOVA/Pages/default.aspx> (last visited Nov. 20, 2022).

⁹⁰ Office of Victim Advocate, Registration, hyperlinks omitted, <https://www.ova.pa.gov/SafetyandSupport/Registration/Pages/default.aspx> (last visited Nov. 10, 2022).

⁹¹ Office of Victim Advocate, Registration Form, <https://www.ova.pa.gov/SafetyandSupport/Registration/Documents/Registration%20Form%20FI%20NAL.pdf> (last visited Nov. 10, 2022), also attached hereto as Attachment D.

⁹² Att. D, *supra* note 91.

Certain portions of the OVA Registration Form expressly require completion by the “District Attorney / victim service provider.”⁹³ Thus, the Select Committee understands that local district attorney’s offices are supposed to facilitate OVA registration for crime victims. In Philadelphia, the DAO has a Victim Support Services Division responsible for, among other things, “inform[ing] victims of their rights and adher[ing] to those rights in all areas of delivery.”⁹⁴ The Select Committee is not aware of how, or if, the Victim Support Services Division of the DAO facilitates OVA registration for Philadelphia crime victims. The Select Committee notes, however, that the Division’s webpage references the “Office of the Victim Advocate” under “QUICK LINKS,” but the hyperlink provided redirects users to the Pennsylvania Parole Board website.⁹⁵ The OVA Registration Form does not appear to be accessible directly from the DAO’s website.

As detailed in the Second Interim Report, the Select Committee is aware of at least one instance of a Philadelphia crime victim not receiving proper notice from the DAO. Article III of HR 240 PN 3634 relates to allegations of DA Krasner’s misbehavior in office with respect to United States District Judge Mitchell S. Goldberg’s scathing order admonishing the DAO’s conduct in the case of *Wharton v. Vaughn*, No. 01-cv-6049 (E.D. Pa. Jul. 22, 2019), saying that the DAO’s representations of communication with the victims’ family were “misleading” and “false.”⁹⁶ Judge Goldberg ordered DA Krasner to write an apology letter to the sole surviving victim, Lisa Hart-Newman, who had not been contacted by the DAO in advance of its concession to the habeas relief requested by the convicted murderer of her parents. Ms. Hart-Newman was a victim herself, having been just seven months old when she was left by her parents’ murderer to freeze to death at the crime scene. While the notice issue in the *Wharton* case was a failure by the DAO and not the OVA, the Select Committee notes that Ms. Hart-Newman shared with counsel for the Chairman of the Select Committee that she was not registered with the OVA and did not know that she needed to register or even had the option to do so.

Given HR 216’s investigative mandate to review “[t]he enforcement of crime victim rights” and “[t]he use of public funds intended for benefitting crime victims ... in the City of Philadelphia,”⁹⁷ the Select Committee has not considered victim services providers existing in jurisdictions outside of Philadelphia and whether/how those providers facilitate OVA registration. However, the Select Committee is concerned that crime victims across the Commonwealth may be unaware of the process for registration with the OVA, or even the right or benefits to registration. If victims may only learn of their option to register with the OVA from their local victim services providers, the rate of OVA registration may vary across jurisdictions. If any local providers, including local district attorney’s offices, are not facilitating OVA registration, the onus of securing notifications from the OVA may be unfairly falling to victims, many of whom may not know about the OVA.

⁹³ *Id.*

⁹⁴ Philadelphia District Attorney’s Office, Victims and Witnesses, <https://phillyda.org/victims-and-witnesses/> (last visited Nov. 10, 2022).

⁹⁵ *Id.*

⁹⁶ *Wharton*, No. 01-cv-6049, ECF Doc. No. 314, at 20.

⁹⁷ HR 216, *supra* note 1 at 1:17-2:3.

As a state agency, funded by the General Assembly, the OVA's services should be readily accessible to all Pennsylvania residents independent of any separate victim services offered by district attorney's offices or other local victim services providers in individual jurisdictions. HR 216 provides that the Select Committee's recommendations "may include ... [l]egislation or other legislative action relating to ensuring the protection, enforcement and delivery of appropriate services and compensation to crime victims" and "the appropriate expenditure of public funds intended ... to benefit crime victims," generally.⁹⁸ Accordingly, the Select Committee recommends consideration of a resolution directing the Joint State Government Commission to conduct a study into the effectiveness of the OVA's registration process, as well as its process for notification to registrants, for the purpose of determining whether improvements could be made to maximize the OVA's reach across the state.

C. Amend the CVA and Commonwealth Attorneys Act to Improve Victim Notification

Section 231 of Subchapter C of the CVA provides:⁹⁹

A victim, or the Commonwealth upon request of a victim, shall have legal standing to assert and enforce a right enumerated in this act or any other right afforded to the victim by law in a trial or appellate court or before an official body with jurisdiction over the victim's case.

However, Section 232(3) states that Subchapter C "shall not ... [c]reate a cause of action for compensation or damages against the Commonwealth, a political subdivision, officer, employee or agent of the Commonwealth, a political subdivision or an officer or employee of a court."¹⁰⁰ Without a cause of action permitted by the Pennsylvania Constitution or state statute, there is no enforcement mechanism available to crime victims for violation by prosecutors of the CVA. The Supreme Court of Rhode Island addressed this under Rhode Island's crime victim's rights laws, declining to permit a negligence cause of action for monetary damages for the state's failure to notify crime victims about the defendant's plea to a lesser offense and reduced sentence, in part because Rhode Island's Victim's Bill of Rights "does not provide a sufficient rule by which the rights given may be enjoyed or protected."¹⁰¹ The court went on to say that such cause of action "must originate from the floor of the General Assembly and not from the bench of the Supreme Court[.]"¹⁰²

The Select Committee heard from a number of individuals who expressed concerns about victim notification by the DAO. Some of those individuals expressed concern that there are no

⁹⁸ *Id.* at 2:16-22.

⁹⁹ 18 P.S. § 11.231.

¹⁰⁰ *Id.* § 11.232(3).

¹⁰¹ *Bandoni v. State*, 715 A.2d 580, 589 (R.I. 1998) (citation omitted); *see also State v. Holt*, 874 P.2d 1183, 1186 (Kan. 1994) (explaining that "any mandatory rights for crime victims, and the provisions are merely directive or permissive [and] there are no provisions for enforcement of the suggested rights and no sanctions imposed if they are not followed").

¹⁰² *Bandoni*, 715 A.2d at 596.

consequences for failure to provide victims the rights they are due under the CVA, i.e., there are no enforcement mechanisms. Others suggested that the CVA does not sufficiently identify the persons responsible for victim notification, i.e., there are no standard procedures. Per HR 216's mandate that the Select Committee's recommendations "may include ... [l]egislation or other legislative action relating to ensuring the protection, enforcement and delivery of appropriate services and compensation to crime victims,"¹⁰³ the Select Committee recommends the House consider a bill to improve victim notification and the proper delivery of other rights due to victims under the CVA by granting authority to the OAG to establish standard procedures for prosecutors to follow in their implementation of the CVA and providing mechanisms to enforce prosecutors' adherence to those standards.

Chapter 2 of the Commonwealth Attorneys Act establishes the OAG as an independent department.¹⁰⁴ The Select Committee recommends that the House consider amending Section 204 and/or 205 of the Commonwealth Attorneys Act to include within the OAG's duties the promulgation of standard procedures for district attorney's offices to follow in their implementation of the CVA and for their certification to the OAG of compliance with those standards. In its establishment of such standards, the OAG may be guided by the Criminal Justice Standards published by the American Bar Association, which govern, among other things, the professional conduct and performance of prosecutors, training programs, workload, and prosecutorial relationships.¹⁰⁵

In addition, the Select Committee recommends that the OAG be granted the authority to audit and certify compliance by district attorney's offices with the standard procedures it promulgates, and, among any other disciplinary actions to be determined by the OAG, refer any instances of non-compliance by the DAO to the Pennsylvania Intergovernmental Cooperation Authority ("PICA")¹⁰⁶ for its independent audit of funding allocated by or through the City of Philadelphia to the DAO for purposes of compliance with the CVA.¹⁰⁷ This recommendation that OAG act as an oversight body with respect to the enforcement of crime victim's rights, with authority to take disciplinary action or refer instances of non-compliance to other legislative bodies, is not without precedent.

¹⁰³ HR 216, *supra* note 1 at 2:16-18.

¹⁰⁴ 71 P.S. § 732-201.

¹⁰⁵ See American Bar Association, *Criminal Justice Standards for the Prosecution Function*, Fourth Edition, (2017),

https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/.

¹⁰⁶ Pennsylvania Intergovernmental Cooperation Authority, About Us, <https://www.picapa.org/about-us/> (last visited Nov. 17, 2022).

¹⁰⁷ Pennsylvania Intergovernmental Cooperation Authority, *Intergovernmental Cooperation Agreement by and between Pennsylvania Intergovernmental Cooperation Authority and the City of Philadelphia*, (Jan. 8, 1992), § 5.05 (Independent Audits), <https://www.picapa.org/wp-content/uploads/2020/12/Agreement.pdf> (last visited Nov. 17, 2022).

Specifically, the Select Committee has identified other states with audit procedures and reasonable enforcement mechanisms in their victims' rights law, including for example (alphabetically):

- **Arizona's** Attorney General's Office of Victim Services has an audit procedure to monitor agencies that implement and provide victims' rights. The audit procedure includes a site visit of the service agency, interviews with staff, and victim satisfaction surveys. To that end, the Arizona Attorney General's website enables victims to electronically submit a Victims' Rights Complaint Form for review by the Office of Victim Services.¹⁰⁸ The office's final audit report includes conclusions regarding compliance with victim's rights statutes and suggestions to remedy any problems. For example, one audit revealed that prosecutors were misinterpreting the scope of victims entitled to notification, and the prosecutors themselves were not timely receiving information on court date changes, which prevented them from relaying this information to victims.
- **Colorado** has established an oversight committee so that "[a]ny affected person, except [the defendant], may enforce compliance with . . . [the Colorado crime victim compensation and victim and witness rights statute] by notifying the crime victim services advisory board . . . of any noncompliance with this article."¹⁰⁹ The board is then to "refer they report of noncompliance to the governor, who shall request that the attorney general file suit to enforce compliance with this article."¹¹⁰
- **Minnesota** has a dedicated commissioner who "may investigate complaints concerning possible violation of the rights of crime victims or witnesses provided under this chapter, the delivery of victim services by victim assistance programs, the administration of the crime victims reparations act, and other complaints of mistreatment by elements of the criminal justice system or victim assistance programs."¹¹¹ The commissioner is empowered to make recommendations to the "appropriate authority for action," and "the authority shall, within a reasonable time period, but not more than 30 days, inform the commissioner about the action taken or the reasons for not complying with the recommendation."¹¹² "The commissioner may publish conclusions and suggestions" to the governor, legislature, press, or others who may be concerned.¹¹³
- **Utah** has a Victim's Rights Committee that is required to meet "at least semiannually to review progress and problems" related to Utah's victims' rights amendments and

¹⁰⁸ Attorney General Mark Brnovich, Victims' Rights Complaint Form, <https://www.azag.gov/complaints/victims-rights> (last visited Nov. 14, 2022).

¹⁰⁹ Colo. Rev. Stat. § 24-4.1-303(17) (2000).

¹¹⁰ *Id.* ("A person, corporation, or other legal entity shall not be entitled to claim or to receive any damages or other financial redress for any failure to comply with this article.").

¹¹¹ Minn. Stat. § 611A.74, Subd. 2 (2022).

¹¹² *Id.* Subd. 5(b).

¹¹³ *Id.* Subd. 5(c).

laws. Victims can submit issues to the committee, which can hold open meetings and publish its findings on issues raised by victims. The committee is also required to “forward minutes of all meetings to the Utah Council on Victims of Crime for review and other appropriate action.”¹¹⁴

In addition, following a federal prosecutor’s violation of the federal Crime Victims’ Rights Act (“CVRA”) by execution of a non-prosecution agreement for Jeffrey Epstein without conferring with Mr. Epstein’s victims,¹¹⁵ two federal house bills were introduced contemplating amendment of the CVRA to create a National Coordinator for Victims Rights empowered to assess disciplinary sanctions for violations of the CVRA, which, like Pennsylvania’s CVA explicitly provides that no private cause of action is authorized: “Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his discretion.”¹¹⁶ Specifically, House Resolution 4729, 116th Cong. § 4 (2019), the Courtney Wild Crime Victims’ Rights Reform Act of 2019, contemplated creation of a National Coordinator for Victim’s Rights to “apply[] disciplinary sanctions, including suspension or termination from employment and delay of promotion . . . for officers and employees” who violate the CVRA.

Similarly, House Resolution 5658, 116th Cong. § 3772 (2020), the Crime Victims’ Rights Act of 2020, contemplated creation of a Crime Victims’ Rights Coordinator empowered to hear CVRA violation complaints and able to assess disciplinary actions for government attorneys, including suspension or termination from employment, suspension from practicing law, or referral to the U.S. attorney if there is criminal misconduct.

The Select Committee recommends that the House consider adopting a bill similar to U.S. House Resolution No. 4279, introduced October 17, 2019, and U.S. House Resolution No. 5658, introduced Jan. 17, 2020, to amend Pennsylvania’s CVA to include enforcement mechanism like, but not necessarily identical or limited to, those outlined above.

III. RECOMMENDATIONS TO ENSURE COMPETENCE OF PROSECUTORS

A. Urge the Judiciary to Adopt Training Mandates for New Prosecutors

Section 10(c) of Article V (Judicial Administration) of the Pennsylvania Constitution states:¹¹⁷

¹¹⁴ Utah Code Ann. § 77-78-5(2) (2000).

¹¹⁵ *Doe I v. U.S.*, 411 F. Supp. 3d 1321, 1324 (S.D. Fla. 2019). The plaintiff proposed a list of remedies including a request for an injunction, a court hearing, production of documents, additional education, monetary sanctions, restitution, and recovery of attorney’s fees. *Id.* at 1325. The court determined that most of the remedies were moot because of Epstein’s death, or were beyond their authority because the CVRA does not “authorize a cause of action for damages.” *Id.* at 1330-32. The only agreed upon remedy was additional education, but the court did not issue an order because the government represented that it would “provide training to its employees about the CVRA and the proper treatment of crime victims.” *Id.* at 1330.

¹¹⁶ 18 U.S.C. § 3771(d)(6).

¹¹⁷ Pa. Const. Art. V § 10(c).

The Supreme Court shall have the power to prescribe general rules ... for admission to the bar and to practice law, and the administration of all courts and supervision of all officers of the Judicial Branch, if such rules are consistent with this Constitution and neither abridge, enlarge nor modify the substantive rights of any litigant

Under that authority, the Pennsylvania Supreme Court adopted a permanent program, administered by the Continuing Legal Education Board, establishing minimum requirements for continuing legal education (“CLE”) for Pennsylvania lawyers.¹¹⁸ The purpose of the CLE requirement is “to ensure that, throughout their careers, lawyers admitted to practice in the Commonwealth of Pennsylvania remain current regarding the law and maintain the requisite knowledge and skill necessary to fulfill their professional responsibilities.”¹¹⁹ This is important because “[t]he public properly expects that lawyers, in the practice of law, will maintain certain standards of professional competence and ethical behavior.”¹²⁰

There can be no serious dispute that the professional competency and ethical duties of prosecutors is of paramount importance to the public. There also can be no dispute that the job of prosecutors in representing the collective citizens of their jurisdictions is supremely unique from the job of attorneys representing private clients or individuals, whether in civil or criminal matters. As discussed by Greg Rowe, Executive Director of the PDAA, at the Select Committee’s September 2022 hearings in Philadelphia, the job of a prosecutor requires working knowledge of specific subject matters and procedures with which lawyers just entering the profession, or even those who have only ever worked in civil practice, likely only have limited, if any, experience.

Throughout its investigation, the Select Committee heard countless stories from former prosecutors, victims of crime in Philadelphia, and others regarding the lack of prosecutorial competence in DA Krasner’s administration. From the brain drain caused by his termination of more than 30 prosecutors his first week in office, to his hiring of persons with no prosecutorial experience, to his withdrawal of the DAO’s membership in the PDAA, DA Krasner has exposed a need for action by the judiciary.

HR 216 provides that the Select Committee’s recommendations “may include ... [l]egislation or other legislative action relating to ... prosecution, sentencing and any other aspect of law enforcement” and “ensuring the protection, enforcement and delivery of appropriate services ... to crime victims.”¹²¹ Accordingly, the Select Committee recommends consideration of a resolution urging the Pennsylvania Supreme Court, in collaboration with the PDAA, to adopt a permanent program establishing unique CLE requirements for Pennsylvania prosecutors aimed at

¹¹⁸ See Pennsylvania Continuing Legal Education, Frequently Asked Questions, Lawyers Questions, *What is CLE*, <https://www.pacle.org/faq#lawyer1> (last visited Nov. 10, 2022).

¹¹⁹ Pennsylvania Continuing Legal Education, Frequently Asked Questions, Lawyers Questions, *What is the purpose of this requirement*, <https://www.pacle.org/faq#lawyer2> (last visited Nov. 10, 2022).

¹²⁰ *Id.*

¹²¹ HR 216, *supra* note 1 at 2:13-18.

improving consistency in prosecutorial training and education across the Commonwealth so as to ensure that, throughout their careers, prosecutors remain current regarding the laws uniquely applicable to their roles as representatives of the public and maintain the requisite knowledge and skill necessary to fulfill their responsibilities on behalf of Pennsylvania citizens.

The Select Committee further recommends urging the Pennsylvania Supreme Court to include as part of that program, or as part of a separate permanent program, certain mandatory minimum training requirements, determined in collaboration with the PDAA, for all newly hired prosecutors, regardless of their experience practicing law in non-prosecutorial positions.

B. Amend the Pennsylvania Constitution to Permit Recall Elections in Philadelphia

The Select Committee engaged Professor Bruce Antkowiak, an expert on criminal process and procedure in the Commonwealth, to testify regarding, among other things, the discretion afforded to prosecutors in Pennsylvania. At the Select Committee’s September 2022 public hearings in Philadelphia, Professor Antkowiak provided expert testimony that short of the electoral process, the power of impeachment authorized by Article VI (Public Officers) of the Pennsylvania Constitution is currently the exclusive remedy available for the removal of a district attorney from office. Professor Antkowiak explained that, unlike in some other states, Pennsylvania law does not provide for recall or removal elections, which is a procedure by which a specified number of voters may seek an election to determine whether elected officials remain in office prior to the end of their term.

The Select Committee is aware that Article IX, Chapter 1, of the Philadelphia Home Rule Charter (“HRC”), adopted pursuant to the authority granted by Section 2 (Home Rule) of Article IX (Local Government) of the Pennsylvania Constitution,¹²² purports to provide procedures for elected officials in Philadelphia to be removed by recall elections.¹²³ As stated in Note 174 to Chapter 1, however: “The Pennsylvania Supreme Court has ruled that recall provisions of municipal home rule charters are unconstitutional. *Petition to Recall Reese*, 542 Pa. 114, 124, 665 A.2d 1162, 1167 (1995) (citing *Citizens Committee to Recall Rizzo v. Board of Elections*, 470 Pa. 1, 367 A.2d 232 (1976)).”¹²⁴ The Pennsylvania Constitution states: “A municipality which has a home rule charter may exercise any power or perform any function not denied by this Constitution[.]”¹²⁵ As explained by the Pennsylvania Supreme Court in *Reese*, Section 7 (Removal of Civil Officers) of Article VI of the Pennsylvania Constitution “indisputably applies to all elected officers, and sets forth in unambiguous language the *exclusive method, absent impeachment*, conviction of crime

¹²² Pa. Const. Art. IX § 2.

¹²³ Philadelphia, Pa., Home Rule Charter Art. IX Ch. 1 § 9-100, *et seq.*, American Legal Publishing, https://codelibrary.amlegal.com/codes/philadelphia/latest/philadelphia_pa/0-0-0-265947#JD_HRC-ArticleIXCh.1 (last visited Nov. 23, 2022) (“Any person holding an elective office of the City ... shall be subject to removal from office at a recall election in the manner provided in this Chapter.”).

¹²⁴ HRC Art. IX Ch. 1, *supra* note 127, at n. 174.

¹²⁵ Pa. Const. Art. IX § 2.

or misbehavior in office, of removing such elected officers.”¹²⁶ Thus, the *Reese* Court concluded that, by providing for recall in its home rule charter, the municipality of Kingston had exceeded the powers conferred by Article IX, Section 2, because that “method of removal is *specifically denied by the Constitution*.”¹²⁷

For all of these reasons, the Select Committee understands that the only way to provide for recall elections in Pennsylvania is enactment of a constitutional amendment. According to the National Conference of State Legislatures, “[m]any states allow citizens to recall a variety of local officials” by constitutional provisions and/or statutes.¹²⁸ Philadelphia HRC Section 9-101 (Recall Procedure) provides:¹²⁹

(1) A recall of an incumbent of an elective office shall be initiated upon petition signed by registered electors. In the case of an elective office to which a candidate is elected from the City at large, the petition shall contain signatures equal in number to at least twenty-five percent of the vote cast for the office of Mayor at the last preceding mayoralty election but signatures from any one ward in excess of one-fifth of the total number required on a petition shall not be counted. In the case of an elective office to which a candidate is elected from a district of the City, the petition shall contain signatures of registered electors in the district equal in number to at least twenty-five percent of the vote cast for the office at the last election. Every recall petition shall name the officer against whom it is directed.

(2) Each elector signing a recall petition shall add to the elector's signature the elector's occupation, residence, stating the ward, and the date of signing. Signatures on a recall petition may be on separate sheets but each sheet shall have appended to it the affidavit of some person, not necessarily a signer of the petition, that to the best of the affiant's knowledge and belief the persons whose signatures appear on the sheet are registered electors of the City, or of the district, as the case may be, that they signed with full knowledge of the contents of the petition, and that their residences are correctly given.

(3) A recall petition shall be tendered for filing to the board of elections having jurisdiction over elections in the City. Such board shall examine it to see whether it contains a sufficient number of apparently genuine signatures. The board may question the genuineness of any signature or signatures appearing on the recall petition and if it shall find that any such signature or signatures are not genuine, it shall disregard them in determining whether the petition contains a sufficient

¹²⁶ 665 A.2d at 1167 (quoting *Rizzo*, 367 A.2d at 250-51) (emphasis altered).

¹²⁷ *Id.* (emphasis added); see Kingston, Pa., Home Rule Charter §§ 704, 705.

¹²⁸ National Conference of State Legislatures, Recall of Local Officials, <https://www.ncsl.org/research/elections-and-campaigns/recall-of-local-officials.aspx> (last visited Nov. 10, 2022) (a chart citing and summarizing the constitutional provisions and statutes of 30 states permitting recall elections).

¹²⁹ HRC § 9-101, *supra* note 127.

number of signatures. It shall also disregard any signature dated more than sixty days before the date the petition was tendered for filing. The board shall eliminate any sheet of the petition which is not accompanied by the required affidavit. The invalidity of any sheet of the petition shall not affect the validity of the petition if a sufficient number of signatures remains after eliminating such an invalid sheet. The board shall complete its examination of the petition within fifteen days and shall thereupon file the petition if valid or reject it if invalid.

Article XI (Amendments) of the Pennsylvania Constitution permits amendments of the Constitution by the General Assembly.¹³⁰ The Select Committee recommends that the legislature consider language to amend the Pennsylvania Constitution to permit recall elections of elected officials in the City of Philadelphia¹³¹ pursuant to a procedure similar to that currently set forth in the Philadelphia HRC, thereby giving effect to the recall rights which were intended for the city's electorate.

¹³⁰ Pa. Const. Art. XI § 1.

¹³¹ The Select Committee notes that the home rule charter at issue in *Reese* was that of the municipality of Kingston. The House may wish to consider language which would more broadly give effect to the recall provisions of other municipalities' home rule charters, as well.

CLOSING REMARKS

The Select Committee closes this Third Report by reiterating that addressing the increase in crime in Philadelphia requires the cooperation and collaboration of all stakeholders who share in the responsibility of addressing public safety, including, but not limited to, joint efforts to create policies and programs that harmonize protection of the public and the avoidance of unjust results. This includes inter-governmental cooperation between the DAO, PPD, OAG, and all other key stakeholders. It is disturbing to the Select Committee that DA Krasner is, to this day, continuing his attempts to thwart the efforts of this Select Committee, rather than to collaborate on its development of bi-partisan recommendations for improving public safety in the city.

As explained in the Second Interim Report, on September 2, 2022, DA Krasner and the DAO filed a petition in the Commonwealth Court of Pennsylvania against the Select Committee and its individual members seeking (a) a declaration that the Subpoena Duces Tecum (“Subpoena”) issued to the DAO by the Chairman, on behalf of the Select Committee, is unenforceable and invalid; (b) an order quashing the Subpoena; (c) an order enjoining the Select Committee from enforcing the Subpoena or issuing any additional subpoenas; (d) a declaration that the Select Committee’s investigation is improper; and (e) an order enjoining the Select Committee’s investigation.¹³² On October 7, 2022, DA Krasner filed an Application to Quash Subpoena Duces Tecum and for a Protective Order in that case. Although the DAO has conceded the Select Committee’s subpoena power by producing some responsive documents after the House held DA Krasner in contempt of the House for willful non-compliance with the Subpoena, on November 7, 2022, DA Krasner filed an amended petition, asserting factual developments since his original filing. DA Krasner and the DAO continue to hamper the Select Committee’s full and complete investigation under HR 216 through their baseless pursuit of the state court action.

The Select Committee regrets DA Krasner’s refusal, along with the refusal of the DAO (which he leads), to fully cooperate with the Committee over the past few months, but notes such behavior is emblematic of his interactions with others, including partners in the law enforcement community. This troubling behavior must end for the sake of securing public safety for Philadelphians. The Select Committee remains hopeful that its work has underscored the critical need for cross-office collaboration and the benefits that can eventually result from that approach.

¹³² *The Philadelphia District Attorney’s Office and Larry Krasner v. The Select Committee on Restoring Law and Order, et al.*, No. 450 M.D. 2022 (Pa. Commw. Ct. 2022).