

**SELECT COMMITTEE ON
RESTORING LAW AND ORDER**

SECOND INTERIM REPORT

OCTOBER 24, 2022

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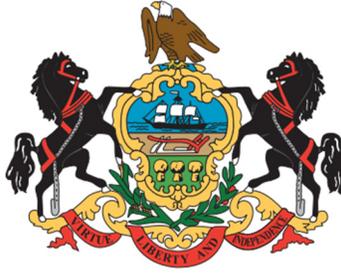
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HOUSE OF REPRESENTATIVES
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

October 23, 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 far-reaching investigation in fulfillment of HR 216. The Second Interim Report of the Select Committee is part of that work, and presents some of the Select Committee's initial findings to the House for further consideration.

In the days and weeks ahead, the Select Committee's investigation will continue.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "John Lawrence".

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.

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)

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:¹

(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:²

(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

¹ HR 216, at 1:6-2:3, attached hereto as Attachment A.

² *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

A bipartisan majority of the House adopted HR 216, establishing the Select Committee, to address the historic increase in crime in Philadelphia, which has resulted in a dramatic increase in violence and a city whose residents fear for their lives and safety and whose businesses no longer wish to remain and invest.

The Select Committee begins this Second Interim Report by summarizing the statistics with respect to the increase in the number of homicide victims—**between January 1, 2021, and October 16, 2022, 992 people have died as a result of a homicide in Philadelphia.** This is a stark increase to the 557 deaths resulting from homicides in 2015 to 2016 combined. The rate of non-fatal shootings has skyrocketed as well. Tragically, this year alone, there have been eight victims of non-fatal shootings who have not yet celebrated their sixth birthdays. The Select Committee has worked tirelessly and thoughtfully to investigate this crisis and to give a voice to family members who have lost loved ones, to victims who have survived encounters with crime, and to concerned citizens who do not otherwise have a voice.

The scope of HR 216 is broad, and the Select Committee recognizes that there are many stakeholders who influence and impact public safety in Philadelphia. HR 216 empowers the Select Committee to investigate, among other things, the “performance of public officials empowered to enforce the law in the City of Philadelphia, including the district attorney[.]” It is no secret that the DAO and DA Krasner’s progressive policies are the focus of criticism with respect to the increasing crime rate, the handling of criminal cases, and the abject failure to respond, in any meaningful way, to the current crisis. It is also no secret that the Philadelphia Police Department (“PPD”) currently faces staffing challenges, which impact its capacity to investigate and clear crimes. Indeed, between 2017 and September of 2022, **81% of non-fatal shootings and 61.5% of fatal shootings did not result in arrests of the shooters.**

However, most troubling to the Select Committee, is what happens after arrests are made—the DAO’s prosecution, *or lack thereof*. The DAO categorizes violent offenses as homicides, non-fatal shootings, rape, robberies, aggravated assault, and other forms of assault. **To date in 2022, 65% of all violent offenses have been withdrawn by the DAO or dismissed by the courts,** resulting in no prosecution for those crimes. Similarly, a recent and thorough study by the Pennsylvania Commission on Sentencing (“Sentencing Commission”) indicates that, compared to district attorney’s offices in other Pennsylvania counties, the DAO withdraws cases at an alarming rate. Specifically, the data reveals that **in 2019 and 2020, charges associated with certain firearms offenses were withdrawn by the DAO at a rate of 18% and 20%, respectively,** compared to the respective statewide averages of 8% and 10%.

The Select Committee has learned that while a prosecutor’s discretion to enforce criminal laws is broad, the most powerful impact of that discretion is a prosecutor’s decision *not* to prosecute a case. The Select Committee shares Philadelphia Police Commission Danielle Outlaw’s outrage that arrests in Philadelphia are not leading to criminals being removed from the streets. ***No doubt, Philadelphia criminals are emboldened by the knowledge that (a) the likelihood that they will***

be arrested is slim, and (b) once caught, the likelihood that they will be prosecuted and incarcerated is minimal.

While the raw data presented within this Executive Summary, and analyzed in further detail in this Second Interim Report is shocking, the Select Committee found it to be aligned with the accounts of former assistant district attorneys (“ADAs”) who worked in DA Krasner’s administration. These ADAs shared that DA Krasner’s progressive policies, upon implementation, created an environment in which ADAs struggled to perform their job duties—both due to the lack of any meaningful training and the immediate and continued elimination of institutional knowledge. The Select Committee heard these ADAs refer to DA Krasner’s administration as “toxic,” concluding that prosecutors have lost their voices in the courtroom. At least two former ADAs shared that DA Krasner’s immigration policy has resulted in the preferential treatment of illegal immigrants whose charges were reduced or pled down solely to prevent adverse immigration consequences. A point that DA Krasner apparently fails to appreciate, as evidenced by his resoluteness with respect to his policies, is that the very communities he believes he is protecting or reforming are the communities suffering the most from the serious increase in crime.

Not surprisingly, DA Krasner and his relentless pursuit of progressive philosophies have recently drawn harsh criticism from the judiciary. Within the brief time that the Select Committee has been conducting its investigation, both the Pennsylvania Supreme Court and the United States District Court for the Eastern District of Pennsylvania have published scathing and extraordinary opinions regarding the conduct of the DAO in their handling of homicide cases.

- In *Commonwealth v. Pownall*, 278 A.3d 885 (Pa. 2022), Pennsylvania Supreme Court Justice Kevin Dougherty determined that the DAO’s conduct “implicate[d] a potential abuse” of the grand jury process and, further, that the conduct revealed the DAO’S efforts to ensure that any such abuse would not be uncovered. *Id.* at 911-12. Tellingly, Justice Dougherty concluded that the DAO’s handling of the case was “the antithesis of what the law expects of a prosecutor.” *Id.* at 918.
- In *Wharton v. Vaughn*, No. 01-cv-6049 (E.D. Pa. Sept. 12, 2022), United States District Judge Mitchell S. Goldberg concluded that the DAO violated certain rules of court by making representations that lacked evidentiary support, which he said reflected the DAO’s “zeal” to overturn a death sentence at the expense of its candor to the court. *Id.* ECF Doc. No. 314, at *17. The Select Committee is most disheartened by the DAO’s failure to provide adequate notice to the only surviving victim of the gruesome crime, who later shared with the court that she lives “[e]very day ... with the effects of that horrific night.” *Id.* ECF Doc. No. 171-5.

The Select Committee recognizes here that DA Krasner’s response to this investigation has paralleled his deficient response to the increase in crime. Rather than collaborate with the Select Committee, the DAO and DA Krasner have put up roadblocks at every turn, even filing frivolous litigation against the Select Committee and its members. From inception of the Select Committee, the DAO and DA Krasner challenged the authority of the legislature to conduct this investigation. Instead of working with the Select Committee to address the very real issues that Philadelphians

and visitors face daily, the DAO and DA Krasner continue to vilify the Committee and grandstand in front of the media. The DAO outright refused to comply with a subpoena duly issued by the Select Committee, and the House held DA Krasner in contempt for that willful refusal by a large, bipartisan vote.

DA Krasner's repeated and ongoing obstruction of the Select Committee's investigation no doubt speaks to his failure to integrate and effectuate his progressive policies with any success—as an office, in failing to be a collaborative partner with other public safety stakeholders, and as a voice for victims, in failing to competently and successfully prosecute violent criminals.

PROCESS OF INVESTIGATION

HR 216 authorized the Chairman of the Select Committee, on behalf of the Select Committee, to, among other things, “[e]mploy counsel and staff for the use of the chair or the select committee.”³ Upon his appointment, the Chairman engaged K&L Gates LLP (“Counsel”)⁴ as his counsel for the purpose of aiding him in overseeing the Select Committee in its development of a process for its investigation, identification and analysis of potentially relevant legal issues, investigation of factual and legal leads, consultation regarding the preparation of the Select Committee’s findings and recommendations, and provision of guidance and aid to the Select Committee as requested by the Chairman.

As explained further below, given the conclusion of the current legislative session on November 30, 2022, the Select Committee and Counsel have moved, and will continue to move, expeditiously toward satisfaction of the ambitious mandates of HR 216. The Select Committee’s many investigative work streams are summarized below.

I. DOCUMENTS

Even before the adoption of HR 216, members of the House, including some members of the Select Committee, had started gathering and/or receiving information relevant to the Select Committee’s work, including voluntary submissions from crime victims and Philadelphia residents impacted by the increase in crime (further discussed in Section II of the separate Investigative Findings section of this Second Interim Report).

Upon the Chairman’s engagement of Counsel, the document collection and review process became formalized and robust, with the Select Committee and Counsel reviewing hundreds of documents identified throughout the investigation regarding topics including, but not limited to, the following:

- Philadelphia crime statistics;
- analyses of data regarding certain crimes in Philadelphia, including, but not limited to, homicides and crimes involving firearms;
- analyses of sentences and penalties for certain crimes in Philadelphia and throughout Pennsylvania;
- personal accounts from crime victims and Philadelphia residents;
- the economic impact of the rising crime rate in Philadelphia;
- personal accounts from former state and federal prosecutors;
- the DAO and DA Krasner’s policies and procedures;

³ *Id.* at 3:5-7 & 18-19.

⁴ Counsel has a major practice in conducting internal investigations, with dozens of its attorneys regularly devoting significant attention to such efforts.

- funds budgeted for initiatives aimed at combatting the rising crime rate in Philadelphia;
- state funding allocated to the DAO for the enforcement of laws in Philadelphia, including monies appropriated by the Joint Local-State Firearm Task Force, i.e., the Gun Violence Task Force (“GVTF”);
- grants issued by the Pennsylvania General Assembly to organizations involved in Philadelphia law enforcement;
- the rights afforded to crime victims in Pennsylvania, including current laws and proposed amendments;
- trainings and resources available to Pennsylvania district attorneys and the trainings provided in DA Krasner’s administration;
- previously proposed resolutions and other laws related to the prosecution of crime in Pennsylvania;
- recent judicial decisions involving the DAO;
- studies related to the use of investigative grand juries in Pennsylvania and the guidance available to individuals serving as grand jurors in Pennsylvania; and
- the duties of and prosecutorial discretion afforded to district attorneys in Pennsylvania.

In addition to the information identified by the Select Committee and Counsel through their own research and informal document requests to third parties, the Chairman, on behalf of the Select Committee, issued six subpoena duces tecum, separately addressed below. The information gleaned from its review of documents is addressed by the Select Committee throughout the separate Investigative Findings section of this Second Interim Report.

II. SUBPOENAS

On behalf of the Select Committee, the Chairman issued six subpoenas duces tecum to the following Philadelphia public offices:

- (1) Philadelphia Controller’s Office (served by process server on August 3, 2022);
- (2) Philadelphia Mayor’s Office (same);
- (3) PPD (same);
- (4) Philadelphia Sheriff’s Office (same);
- (5) Philadelphia Treasurer’s Office (same);
- (6) DAO (service accepted via email on August 9, 2022, by counsel for the DAO and DA Krasner, as explained further below).

In addition, the Chairman issued a subpoena duces tecum to the Defender Association of Philadelphia (“Defender Association”), a private organization, which was served by process server on August 3, 2022.

Among other things, the subpoenas sought documents referring or relating to policies of the DAO and DA Krasner and the impact of any such policies:

- not to enforce or charge certain provisions of the Crimes Code, 18 Pa.C.S. § 101, *et seq.*;
- to make systematic or uniform plea bargains or bail recommendations for individuals charged with certain categories of crimes;
- on the investigation or prosecution of law enforcement officers and placement of officers on any do-not-testify list;
- on use of investigative grand juries in homicide cases; and
- on compliance with the Crime Victims Act (“CVA”), 18 P.S. § 11.101, *et seq.*, including trainings related to notice of proceedings as required by the CVA.

Among other categories of documents, the Select Committee also requested documents from the DAO related to the investigative grand jury proceedings in the *Pownall* case,⁵ as well as documents from the Controller’s and Treasurer’s Offices relating to the DAO’s receipt and use of funds appropriated by the General Assembly, including GVTF funds. The subpoenas duces tecum each provided instructions regarding the search for and production of responsive information including, but not limited to, a specific instruction regarding the assertion of privilege with respect to any documents requested.

Counsel for the Select Committee coordinated with counsel for the Controller’s Office, Mayor’s Office, PPD, Sheriff’s Office, and Treasurer’s Office regarding the scope of the subpoenas and identification of responsive documents. The PPD produced responsive documents and the Controller directed the Select Committee to publicly available responsive information. The Select Committee understands that the Mayor, Sheriff, and Treasurer searched for but did not identify any documents responsive to the subpoena requests.

As explained in detail in the standalone section of this Second Interim Report on DA Krasner’s Contempt of the House, the DAO initially declined to search for or produce any responsive documents and, thus, the House held DA Krasner in contempt.

III. INTERVIEWS

In the first month of the investigation, Counsel sent more than 35 formal interview letters to persons with information potentially relevant to the Select Committee’s work. Those persons were identified from a variety of sources, including, but not limited to:

⁵ *Commonwealth v. Pownall*, 278 A.3d 885 (Pa. 2022), attached hereto as Attachment B, and further discussed in Investigative Findings Section VI.

- public records, including publications identifying persons who had spoken about crime in Philadelphia, the DAO, and DA Krasner;
- more than 200 submissions to the StopKrasner.com website set up by the Pennsylvania House Republican Caucus prior to the adoption of HR 216 by the House;
- the PBS “Philly DA” docuseries;⁶ and
- people who voluntarily contacted members of the Select Committee, other Representatives or staff, and Counsel.

Interviewees often directed the Select Committee to additional individuals who might have an interest in speaking with the Committee. The Select Committee, primarily through Counsel, conducted numerous voluntary video and phone interviews of individuals in the following categories, among others:

- victims of crime in Philadelphia;
- residents of Philadelphia who have been impacted by the rising crime rate;
- former ADAs, both within the Krasner administration and prior administrations;
- former federal prosecutors with information about the DAO;
- attorneys involved in some of the cases involving the DAO recently addressed by the judiciary; and
- representatives of other state offices that interact with the DAO.

In addition, the Chairman, on behalf of the Select Committee, subpoenaed certain individuals for depositions by Counsel, including, most recently, five current employees of the DAO. Some of the subpoenaed individuals were informally interviewed in lieu of the depositions. Given time constraints, the depositions of the DAO employees have not been conducted as of the issuance of this Second Interim Report. The Select Committee has reserved its rights to depose those individuals, and any other employees of the DAO, on mutually agreeable future dates.

The information the Select Committee learned through interviews is addressed throughout the separate Investigative Findings section of this Second Interim Report.

IV. COORDINATION WITH STATE AGENCIES

Throughout the course of the investigation, the following organizations have voluntarily communicated/coordinated with the Select Committee and Counsel:

- Sentencing Commission, which provided testimony at the public hearings conducted by the Select Committee (addressed in Section V below) regarding the DAO’s

⁶ See Nicole Salazar, *Philly DA*, Independent Lens, (PBS 2021).

prosecution of violations of Pennsylvania’s Uniform Firearms Act of 1955, 18 Pa.C.S. § 6101, *et seq.* (“VUFA” offenses);

- Pennsylvania District Attorneys’ Association and Institute (“PDAA/I”), which provided testimony at the public hearings (addressed in Section V below) regarding DA Krasner’s withdrawal of the DAO’s PDAA membership; and
- Pennsylvania Office of Attorney General (“OAG”), which provided a robust set of documents regarding, *inter alia*, the use of GVTF funds by the DAO.

The Select Committee is appreciative of the cooperation afforded by these organizations.

V. PUBLIC HEARINGS

The Select Committee conducted two days of public hearings on September 29 and 30, 2022, at Penn State at the Navy Yard, in Philadelphia. The Chairman opened the hearings by introducing the scope of the Select Committee’s investigation and emphasizing the necessity for change in Philadelphia:

There is good reason for this investigative probe. Let’s look at data published by Philadelphia officials themselves. According to data compiled by Rebecca Rhynhart, Controller for the City of Philadelphia, as of September 22, 2022, there have been 1,379 nonfatal shootings and 366 fatal shootings in the city to date in 2022. The City reached a grim milestone earlier this week – 1,000 carjackings to date this year, including the carjacking of a member of the United States Congress in broad daylight in South Philadelphia just blocks away from the Sports Complex. Burglaries and armed robberies have dramatically increased as well, contributing to a sense of lawlessness in the City expressed by residents, employers, students, and tourists. Shoplifting has reached an epidemic level. The increase in crime has led to a decline in the quality of life for everyone in the City, a regional impact to the surrounding areas, and of course, a lifetime of pain for those who have lost a family member to senseless criminal activity.

In addition to the real and gruesome human cost of increased violence, there is a financial cost as well. This year’s City Budget includes hundreds of millions of dollars to fund anti-violence initiatives. Notable retailers large and small including Starbucks have closed locations in the City as a result of persistent crime. These closures gain outsized media attention, and help to contribute to the narrative that the City is unsafe. Just look at the media coverage of the ransacking of a Wawa on the Roosevelt Boulevard earlier this week, and the corresponding surge of discussion on

social media. On a larger scale, an August 2, 2022, article in the Philadelphia Business Journal outlined the reluctance of major regional corporations to locate employees within City limits. While the City has had many success stories in recent years attracting a diverse group of new employers, crime and lawlessness are holding the City back from achieving its full potential.

I'm sure many here today follow the news. Here are a few headlines just from the last week:

- “Man Shot in rear driveway of Northeast Philadelphia home.”
- “5 High school football players shot, 1 dead in Philly.”
- “2-year-old shot in another night of gun violence in Philly.”
- “Girl, 8, Caught in the crossfire as Nearly 50 Shots Fired in North Philadelphia.”
- “Man dies after being shot 21 times in Philly neighborhood.”
- “2 Teens Shot in Philly’s Nicetown Neighborhood.”

This is not normal. It is not OK. It is not acceptable. To those who question why the State House of Representatives is holding this hearing today, why the House is looking into crime here in Philly, I say – in light of what is happening, it would be dereliction of duty if we did not take action.

Take a look at these headlines. We must act. There is no greater work, no greater issue facing the Commonwealth than addressing this situation, and it would be reckless for the General Assembly of this Commonwealth to ignore all of this and pretend everything is just fine. Lawlessness, rising crime rates, and the disregard of law and order should not, cannot, and will not be tolerated.

It is a paramount duty of government to protect its citizens. As you will hear this morning, we have failed. No one can reasonably dispute that change must occur.

Representative Brown, a victim of gun violence in the city as child, echoed the serious nature of the Select Committee’s work:

So, I want to take this opportunity to set the record straight and let the public know why I am here on this committee. It is simple. I am here to represent the victims of violent crimes, and my neighbors, and my family and friends in the City of Philadelphia. It is well beyond time that we start to actually solve this crisis that we are in.

A little over 20 years ago ... I was shot in the back at the age of 14 by a repeat violent offender. The memory of my blood on the pavement, the ride in the ambulance, and my mother screaming at the hospital, "Please save my baby." So, when it comes to gun violence in our city, I take no backseat to no one trying to take control of my narrative.

Having had spent several months in the county jail, witnessing the horrible conditions and the horrible treatment that inmates face every single day, I take no back seat to anyone when it comes to criminal justice reform. I am living proof of what second chances look like. ...

... I take this job very seriously and I will always choose to make the best decision for these children and innocent women being shot, for that formerly incarcerated person, for that family raised by a single mother on drugs doing the best she can doing whatever it took to make sure her children ate that night.

This is a very tough business to be in. And it takes courage and the willingness to do some unpopular things to bring forth some real change.

A few weeks ago, I got a phone call from a constituent for me to come see his mother. She was 100 years old ... and the son says he has one ask before his mother passes away. ... He asked to clean up the block and remove some of the criminals on the block so that she could sit on the porch one last time before she passed away. She didn't sit on the porch in over two years because of the violent crime.

She is why I am sitting here today to get to the bottom of these problems that we face.

Representative Ecker stressed the importance of the Select Committee's work with respect to the economic impact of increasing crime, describing the work of the Committee as follows:

It's to find solutions to get to the bottom of what's happening in this great City because it is the economic powerhouse of our state, and we need to care as a state. So no matter if I'm from Adams County or Bucks County or the City of Philadelphia, we all have a vested interest in making sure our city here in Philadelphia is a great place to live, that people want to raise a family, and continue it to be the economic driver that it is.

Representative Thomas concluded: "We are here to try to figure out what we can do to help," thanking all those who were present "to hear and contribute on how we can help solve what is an obvious problem in the City."

The first hearing saw testimony from five victims of violent crime in Philadelphia, each of whom suffered the senseless loss of a child or grandchild during DA Krasner's tenure. Four of the victims testified via pre-recorded video and one testified in person. That testimony is summarized in Investigative Findings Section II.

After a recess, the first hearing continued with testimony from Professor Bruce Antkowiak, expert witness on criminal process and procedure in the Commonwealth. Professor Antkowiak testified regarding Justice Dougherty's "special concurrence" in the *Pownall* case regarding potential abuse of the grand jury process by the DAO. He also addressed the discretion afforded to district attorneys in the Commonwealth. That testimony is summarized in Investigative Findings Sections V and VI.

The Select Committee held a second hearing on September 30, 2022. The executive directors of the PDAA and Sentencing Commission testified, as noted above. Their testimony is described more fully in Investigative Sections IV.B. and I.B., respectively.

VI. ONGOING WORK

The Investigative Findings section of this Second Interim Report sets forth the Select Committee's interim compilation of the data and information gathered and digested to date. Due to the sheer volume of materials to be considered and investigative work to be conducted by the Select Committee necessary to satisfy the broad mandate of HR 216, the Select Committee's compilation, development, and review of information and data are ongoing. In continuation of the work steams described in this Process of Investigation section, the Select Committee will gather further documents and interview individuals, and will compel the production of documents and testimony, relevant to the Select Committee's work under HR 216, as the Select Committee deems to be necessary.

DA KRASNER'S CONTEMPT OF THE HOUSE

HR 216 provides the Select Committee with a broad investigative mandate. It is axiomatic that any investigation into Philadelphia's rising crime rates, and the impact of crime on the city, would benefit from information from the DAO. With this in mind, the Chairman, on behalf of the Select Committee, issued a subpoena duces tecum ("Subpoena") to the DAO in early August 2022, at the same time the offices of other Philadelphia public officials were subpoenaed.

Unlike every other public office subpoenaed by the Select Committee, DA Krasner refused to produce or even search for responsive documents.

The Select Committee first attempted to serve a subpoena duces tecum on the DAO by process server on August 3, 2022. However, service could not be accomplished on the DAO, as the security guard turned away the process server, stating that the only DAO employee permitted to accept service of subpoenas on behalf of the DAO was out of the office that week.

The process server attempted service a second time on August 8, 2022, but was again turned away because the person who could accept service was still out of the office. That day, Counsel left a voicemail on the DAO's main telephone line, noting that it was attempting to serve the Subpoena and requesting a return call. Counsel for the DAO reached out to the Chairman's Counsel that afternoon indicating that they represented the DAO and DA Krasner with respect to the Select Committee's investigation under HR 216. Counsel for DA Krasner and the DAO requested that all future correspondence with DA Krasner and the DAO be directed to them. The following day, August 9, 2022, counsel for the DAO and DA Krasner accepted service of the Subpoena via email. The Subpoena sought the DAO's production of documents by August 22, 2022.

On August 22, 2022, counsel for the DAO and DA Krasner responded to the Subpoena, objecting to every request and stating that it would not search for or produce any responsive documents. The DAO did not seek an extension to further consider its response, did not propose modifications to limit the requests, and did not provide a log of any privileged documents, as was requested in the Subpoena.

By letter dated August 24, 2022, the Chairman, on behalf of the Select Committee, set forth the Select Committee's clear authority in support of the Subpoena and requested that the DAO revise its Subpoena response and produce non-privileged documents by no later than August 31, 2022.

By letter dated August 31, 2022, counsel for DA Krasner and the DAO declined to revise the DAO's original response and again refused to search for and produce any documents.

On September 2, 2022, the Chairman, on behalf of the Select Committee, issued a Request to Show Cause to the DAO. The Request to Show Cause informed DA Krasner of the obligations of the Select Committee under General Operating Rule of the House of Representatives 51, the pertinent part of which provides as follows:⁷

⁷ See H.R. 3, 2021 Reg. Sess. (Pa. 2021) (amending General Operating Rules of the House of Representatives, Rule 51).

Where any person willfully neglects or refuses to comply with any subpoena issued by the committee or refuses to testify before the committee on any matter regarding which the person may be lawfully interrogated, it shall be the duty of the committee to report such disobedience or refusal to the House of Representatives, and such person shall be subject to the penalties provided by the laws of the Commonwealth in such cases.

The Request to Show Cause demanded a response by September 12, 2022, addressing why the Select Committee should not inform the House, as required by Rule 51, of the refusal of DA Krasner and the DAO to comply with the Subpoena, and, further, why the House should not hold DA Krasner in contempt, as authorized by Article II, Section 11 of the Pennsylvania Constitution for refusing to comply with the Subpoena.

Also on September 2, 2022, the DA Krasner and the DAO filed a petition in the Commonwealth Court of Pennsylvania against the Select Committee and its individual members, in their capacities as members of the Committee (the “Petition”).⁸ In the Petition, DA Krasner and the DAO seek (a) a declaration that the Subpoena 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. No request for expedited review was made. The Petition remains pending.

On September 12, 2022, counsel for DA Krasner and the DAO responded to the Request to Show Cause, reiterating their belief that the Subpoena seeks documents protected by privileges, that the Subpoena and the Select Committee’s investigation violates the separation of powers doctrine, that the Subpoena and the Select Committee’s investigation do not serve a valid legal purpose, that the House lacks authority to impeach DA Krasner, and that the impeachment effort would violate the Constitutional rights of Philadelphia voters.

Inexplicably, the response of DA Krasner and the DAO failed to account for the clear, repeated direction of the Select Committee with regard to privileged documents. The Subpoena expressly excluded privileged documents from production in instruction no. 2, which requested that the DAO produce a log of privileged documents: “Should you assert a privilege with respect to any Document requested herein, You are requested to provide the following as to each such Document or item of information:”

In addition, a key mandate of HR 216 (as well as the Select Committee’s investigative process) is and was to determine what, if any, changes could be made to improve public safety for the residents of Philadelphia and its visitors. The Select Committee, perhaps optimistically, hoped that DA Krasner and the DAO might take the opportunity to collaborate with the legislature in its consideration of measures to decrease crime and improve public safety in the city. Instead, DA

⁸ See *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).

Krasner has taken every opportunity to stonewall the work of the Select Committee, even filing suit in Commonwealth Court to halt *any* action of the Committee.

In light of DA Krasner's willful refusal to comply with the duly issued Subpoena, and in light of the responsibility of the Select Committee under House Rule 51 to report such willful refusal to the House, the Select Committee adopted an Interim Report on September 13, 2022, recommending that DA Krasner be held in contempt of the House. The Interim Report was submitted to the House pursuant to House Rule 51.⁹ Later that day, the House Rules Committee originated House Resolution 227, Printer's No. 3458 ("HR 227"), a resolution "[f]inding that Philadelphia District Attorney Lawrence Krasner is in contempt of the House[.]"¹⁰ After debate, the Rules Committee passed HR 227 by a bipartisan 23-10 vote.¹¹ HR 227 then came before the full House for consideration. After debate, an overwhelming, bipartisan majority (162 to 38) voted to hold DA Krasner in contempt of the House for his willful refusal to comply with the Subpoena duly issued by the Chairman, on behalf of the Select Committee.¹²

Thereafter, although not withdrawing his pending lawsuit, DA Krasner began producing documents responsive to at least some of the Subpoena's requests. On September 19, 2022, his counsel emailed the Chairman's Counsel a ShareFile link to the documents Bates numbered DAO 000001-000614, with a "List of Policies and Reports" included in the production. Counsel to the DAO and DA Krasner emailed another production on September 20, 2022, Bates numbered DAO 000615-000632. While many of the documents produced are available publicly on the DAO's website, some appear to be internal documents, indicating that the DAO conducted a search for responsive documents. These productions are in direct contradiction with the DAO and DA Krasner's pending suit and requested relief.

DA Krasner has continued his public, baseless criticism of the Select Committee as an illegitimate body, a contention with which the Select Committee and Speaker of the House have fervently and publicly disagreed. From the outset, as the Select Committee sought cooperation from numerous public safety stakeholders in Philadelphia, it was clear that only DA Krasner and the DAO were refusing to participate in this legitimate legislative effort.

⁹ See Office of the Parliamentarian, *Daily Session Update*, House of Representatives, (Sept. 13, 2022, 2:40 PM), <https://www.legis.state.pa.us/WU01/LI/HS/2021/0/20220913.htm>.

¹⁰ H.R. 227, 2021-2022 Reg. Sess. (Pa. 2022), at 1:1-2.

¹¹ See House Committee Roll Call Votes, H.R. 227, (Sept. 13, 2022), <https://www.legis.state.pa.us/cfdocs/legis/RCC/PUBLIC/listVoteSummaryH.cfm?sYear=2021&sInd=0&cteeCde=44&theDate=09/13/2022&RollCallId=2008>.

¹² See House Roll Calls, Regular Session of 2021-2022, H.R. 227, (Sept. 13, 2022), https://www.legis.state.pa.us/cfdocs/legis/RC/PUBLIC/rc_view_action2.cfm?sess_yr=2021&ses_s_ind=0&rc_body=H&rc_nbr=1165.

DA KRASNER'S WRITTEN STATEMENT TO THE SELECT COMMITTEE

On October 15, 2022, Counsel for the Chairman of the Select Committee invited DA Krasner to submit a written statement and/or documents relevant to the Select Committee's work as defined by HR 216. On October 21, 2022, DA Krasner submitted a six-page letter for the Select Committee's review and consideration. This letter is included as Attachment C to this Second Interim Report.

The Select Committee takes issue with nearly all of DA Krasner's submitted statement and allows the letter, in juxtaposition with the below Investigative Findings, to speak for itself.

INVESTIGATIVE FINDINGS

Violent crime in Philadelphia has increased to unprecedented and unacceptable levels during DA Krasner’s administration. In particular, the Select Committee notes the soaring rate of gun crimes under DA Krasner’s watch. As reported by Controller Rhynhart: “**The city experienced 562 homicides in 2021, making it the deadliest year in Philadelphia’s recorded history.**”¹³ In 2019, there were nearly 1,500 shooting victims in Philadelphia (as compared to 1,200 in 2015).¹⁴ By 2020, the number of shooting victims had **increased to 2,266.**¹⁵ Fatal shootings between 2015 and 2020 **increased 93%**—nearly two-fold.¹⁶

Law enforcement officers in the PPD are operating in a hamstrung environment. Just this month, Police Commissioner Outlaw issued a damning statement that is, by any measure, a shocking indictment of the state of law and order in today’s Philadelphia:¹⁷

We are tired of arresting the same suspects over and over again, only to see them right back out on the street to continue and sometimes escalate their criminal ways.

We are tired of having to send our officers into harm’s way to serve warrants on suspects who have no business being on the street in the first place.

No - not everyone needs to be in jail. *But when we repeatedly see the extensive criminal histories of those we arrest for violent crime, the question needs to be asked as to why they were yet again back on the street and terrorizing our communities.*

I am beyond disgusted by this violence. Our entire department is sickened by what is happening to the people that live, work, and visit our city.

Residents are tired of it.

Business owners are tired of it.

Our children are tired of it.

We are long past ‘enough is enough’.

The Select Committee takes special note of Commissioner Outlaw’s comments. No reasonable individual can disagree with her grim assessment. The facts, as outlined in the next section of this

¹³ Rebecca Rhynhart, *Data Release: Gun Violence Clearance Rates and Case Outcomes*, (Jan. 15, 2022), (emphasis added), <https://controller.phila.gov/philadelphia-audits/data-release-gun-violence-trends/>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Danielle Outlaw, [Danielle M. Outlaw \(@PPDCommish\) / Twitter](#), (Oct. 12, 2022) (emphasis added).

Second Interim Report, unfortunately show a clear statistical foundation that would lead any reasonable individual to draw the same conclusion.

I. VIOLENT CRIME IS SPIKING IN PHILADELPHIA

The PPD reports that the number of homicide victims has increased every year since 2016, more than doubling from 2016 to 2021:¹⁸



As outlined in the above graphic, Philadelphia’s murder rate was relatively static between 2008 and 2017, with a sharp increase in 2018. An even more pronounced increase came between 2019 and 2020—a dramatic 40.2% jump, followed by another 12.6% jump in 2021. In 2022, there have already been 430 homicides in the city as of only October 16.¹⁹ The PPD reports that this year’s homicide rate is on par with last year’s rate, showing only a 2% decline in this year’s fatal shootings as of October 16, as compared to the same day last year.²⁰ Non-fatal shootings are also climbing sharply. According to the DAO’s own data, there were 751 non-fatal shootings in 2017, the year before DA Krasner took office, and by 2021, there were a total of 1,449.²¹ As of the data published by October 21, 2022, the total non-fatal shootings of 2021 has already been exceeded, with over two months still to go this year:²²

Data: YTD Count of Incidents by Reported Offense Category

| Offense Category | 2016 YTD | 2017 YTD | 2018 YTD | 2019 YTD | 2020 YTD | 2021 YTD | 2022 YTD |
|--------------------|----------|----------|----------|----------|----------|----------|----------|
| Homicide: Shooting | 177 | 190 | 206 | 242 | 328 | 386 | 387 |
| Homicide: Other | 49 | 53 | 56 | 36 | 58 | 57 | 40 |
| Non-Fatal Shooting | 811 | 751 | 853 | 909 | 1,361 | 1,449 | 1,489 |

In addition to homicides and non-fatal shootings, Philadelphians have seen a significant increase in carjackings—the theft of an occupied vehicle, many of which involve the use of a gun or other weapon. In Philadelphia, the majority of carjackings are committed by individuals 20 years old or younger.²³ The PPD reported 946 carjackings as of September 7, 2022, which already exceeds the

¹⁸ See *Crime Map & Stats*, Philadelphia Police Department, <https://www.phillypolice.com/crime-maps-stats/> (last visited Oct. 14, 2022).

¹⁹ *Id.*

²⁰ *Id.*

²¹ See *Public Data Dashboard, Incidents*, Philadelphia District Attorney’s Office, https://data.philadao.com/Incidents_Report.html (last visited Oct. 21, 2022).

²² *Id.*

²³ Ellie Rushing and Dylan Purcell, *Carjacking continues to plague Philadelphia. Here’s how young carjackers say they get away with it*, Philadelphia Inquirer, (May 31, 2022),

total of 847 in all of 2021.²⁴ In response to this steep escalation, the PPD created a task force with the Federal Bureau of Intelligence, U.S. Attorney’s Office Violent Crime Unit, and the Bureau of Alcohol, Tobacco, Firearms and Explosives.²⁵

As reported by Controller Rhynhart, gun violence and homicides are concentrated in historically disadvantaged neighborhoods, and those neighborhoods are “primarily low-income with predominately black or African American residents.”²⁶ Paradoxically, despite and during the emergence of these alarming trends, an April 2021 report published by the DAO, titled “Ending Mass Supervision: Evaluating Reforms,” offered this rosy assessment in DA Krasner’s opening letter: “I am proud of the work this office has done to make Philadelphians, particularly Philadelphians of Color, freer from unnecessary government intrusion, while keeping our communities safe.”²⁷ Based on information developed by the Select Committee in its investigation, and an unvarnished review of the shocking increases in the rates of crime across the city, DA Krasner’s assertion that he is “keeping our communities safe” is utterly disconnected from the reality Philadelphians face every day. Apparently blinded by the goal of implementing progressive policies at any cost, DA Krasner has contributed to a catastrophic rise in violent crime at the expense of public safety.

While DA Krasner insists that his progressive policies are working, the DAO expressly recognizes the increase in Philadelphia crime on its website. As of October 17, 2022, its reported trends gathered from the PPD’s “incident” data, which tracks the reporting of all crimes in addition to homicides,²⁸ shows a 12% increase in all reported offenses, a 6% increase in violent offenses, and a 21% increase in property offenses:²⁹

<https://www.inquirer.com/news/carjacking-philadelphia-statistics-stolen-cars-crime-20220531.html>.

²⁴ Maggie Kent, *Carjackings are happening all over Philadelphia, but there are some hotspots*, WPVI-TV Action News, (Sept. 7, 2022), <https://6abc.com/philadelphia-carjacking-philly-police-2022-map/12209566/>.

²⁵ *Id.*

²⁶ Rebecca Rhynhart, *Report on the Economic Impact of Homicides*, (Oct. 23, 2019), <https://controller.phila.gov/philadelphia-audits/economic-impact-of-homicides/>.

²⁷ *Ending Mass Supervision: Evaluating Reforms*, DAO Supervision Report, (Apr. 2021), <https://www.docdroind.net/rWxCb15/dao-supervision-report.pdf>.

²⁸ *Public Data Dashboard, Incidents*, Philadelphia District Attorney’s Office, https://data.philadao.com/Incidents_Report.html (last visited Oct. 17, 2022).

²⁹ *Id.*

Data: YTD Count of Incidents by Reported Offense Category

| Offense Category | 2016 YTD | 2017 YTD | 2018 YTD | 2019 YTD | 2020 YTD | 2021 YTD | 2022 YTD | Yr-Yr Change |
|------------------------|----------------|----------------|----------------|----------------|---------------|---------------|----------------|--------------|
| All Violent Offenses | 32,378 | 31,595 | 31,387 | 32,555 | 30,360 | 31,593 | 33,349 | 6% |
| All Property Offenses | 58,522 | 57,153 | 57,888 | 56,067 | 52,281 | 55,910 | 67,780 | 21% |
| All Drug Offenses | 6,386 | 7,868 | 7,709 | 8,506 | 5,588 | 3,275 | 2,305 | -30% |
| All Firearm Possession | 1,518 | 1,677 | 1,759 | 1,980 | 2,574 | 3,008 | 2,473 | -18% |
| All Other Offenses | 5,650 | 4,691 | 3,743 | 3,376 | 2,322 | 1,886 | 1,312 | -30% |
| Uncategorized Offenses | 658 | 677 | 681 | 1,078 | 906 | 1,331 | 1,656 | 24% |
| All Offenses | 105,112 | 103,661 | 102,967 | 103,562 | 94,031 | 97,003 | 108,875 | 12% |

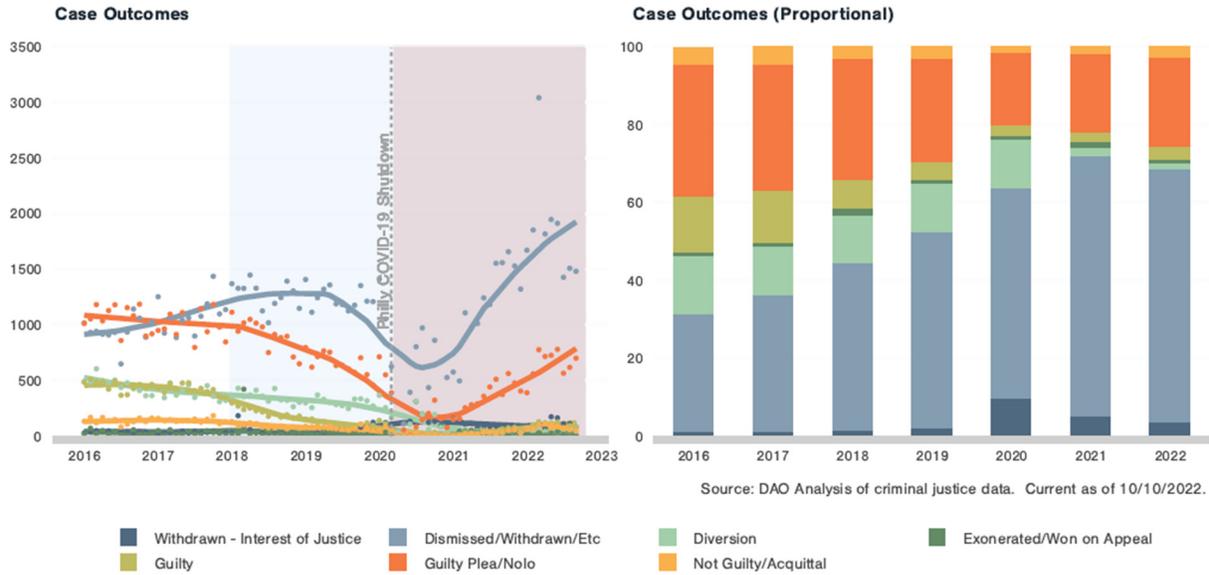
Areas in red coincide with the COVID-19 pandemic. During the pandemic, the criminal legal system has operated completely differently than it normally does. The changes that can be observed on our dashboard include: 1) isolation, closed schools, and the loss of community programming has led to an increase in serious violent crime, 2) police have made fewer arrests overall (in particular for minor offenses), 3) court policies and other restrictions meant to keep people safe have also disrupted or delayed court hearings and led to a significant increase in open cases forced dismissals and withdrawals. See our [report on the justice system during COVID-19](#) to learn more.

The only offenses reported as having decreased include drug and firearm possession offenses. While the above data reflects reported “incidents,” and not charges or convictions, the Select Committee recognizes that DAO policies or patterns of not charging or prosecuting certain offenses to the fullest extent permitted by law likely impacts the reporting of those offenses to law enforcement by Philadelphians. Indeed, the Select Committee heard this very point from some of the interviewed victims of crime. The Select Committee’s interviews of crime victims are addressed in Section II below.

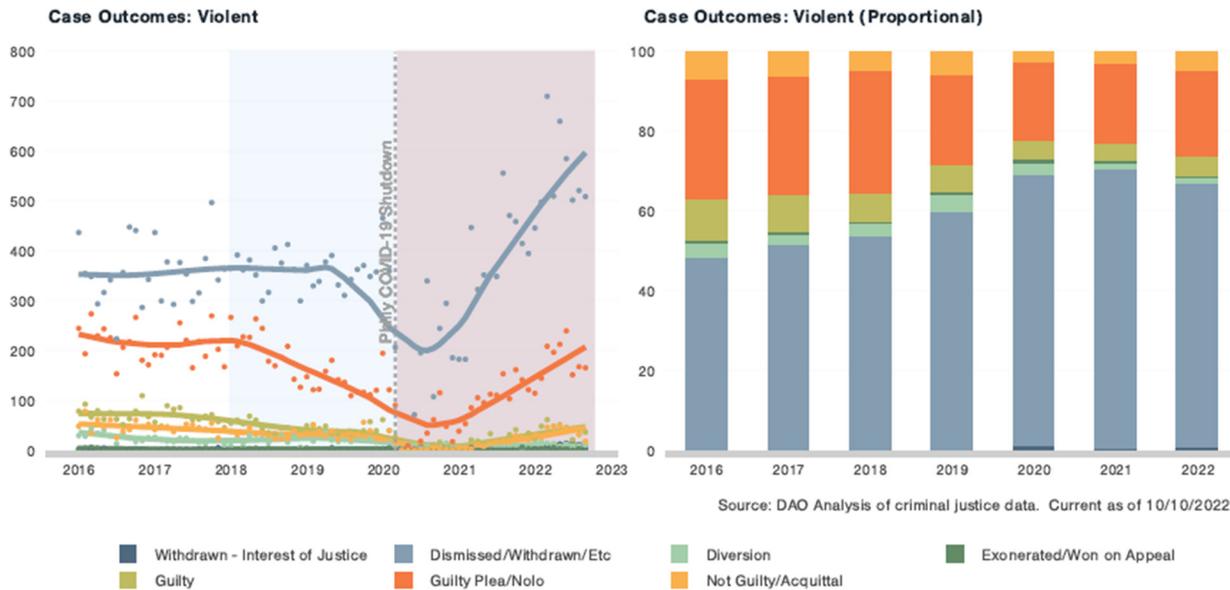
A. Prosecution of Violent Crime is Decreasing in Philadelphia

The Select Committee carefully considered not only the significant spike in Philadelphia’s crime rate, but also the DAO’s prosecution of crime, or lack thereof, in that same period. A review of the case outcomes published by the DAO reveals a troubling trend, particularly with respect to dismissed and withdrawn cases. While the DAO reported that only 30% of “all offenses” resulted in a dismissal or withdrawal in 2016, that number increased to 50% in 2019, 54% in 2020, 67% in 2021, and **65% to date in 2022**.³⁰

³⁰ *Case Outcomes*, Philadelphia District Attorney’s Office Public Data Dashboard, https://data.philadao.com/Case_Outcomes_Report.html (last visited Oct. 11, 2022).



When the data is filtered for violent offenses, a similar trend exists. In 2016, 48% of violent offenses were withdrawn or dismissed. By 2019, that number increased to 60%, further increasing to 68% in 2020, and 70% in 2021. To date, in 2022, nearly two-thirds of all violent offenses have been withdrawn or dismissed.³¹



The Select Committee notes that the DAO’s statistics combine nolle prossed cases (i.e., cases the DAO decided not to prosecute) together with cases subject to judicial dismissals. However, when compared against the data provided by the Sentencing Commission regarding VUFA offenses

³¹ *Id.*

nolle prosequi by the DAO (discussed below), the Select Committee finds a troubling trend with respect to the DAO's decisions to nolle prosequi cases involving firearms.

B. VUFA Offenses Are More Common and More Frequently Nolle Prosequi in Philadelphia than in Other Counties

Pennsylvania's Uniform Firearms Act sets forth various offenses related to firearm possession in the Commonwealth, with violations of the Act (previously defined, "VUFA offenses") ranging from summary offenses to felonies of the first degree.³² While the Act identifies many VUFA offenses, the most common include charges for a person not to possess, use, manufacture, control, sell, or transfer firearms;³³ firearms not to be carried without a license;³⁴ and relating to the sale or transfer of firearms.³⁵ There are also additional charges related to carrying firearms without licenses specific only to Philadelphia.³⁶ It is typical for VUFA offenses to be co-charged with other violent offenses—for example, someone charged with a homicide may also be charged with a VUFA offense related to the illegal possession of the firearm used in the commission of the crime.

The investigation, prosecution, and sentencing of individuals charged with VUFA offenses has been a topic of bipartisan interest in the current House session. In November 2021, a bipartisan (133 to 67) House majority advanced House Resolution No. 111, Printer's No. 2433 ("HR 111"), directing the Sentencing Commission to perform a comprehensive study on the topic and to report its findings to the House for further consideration. The resulting report, entitled "A Comprehensive Study of Violations of Pennsylvania's Uniform Firearms Act" (the "HR 111 Study"), prepared pursuant to HR 111, has received significant attention since its June 30, 2022 issuance.³⁷

The Select Committee invited the Executive Director of the Sentencing Commission, Mark Bergstrom, to present relevant sections of the HR 111 Study at the Select Committee's September 30, 2022 public hearing in Philadelphia. Mr. Bergstrom noted the Sentencing Commission is an agency of the Pennsylvania General Assembly, created to promote an effective, humane, and rational sentencing policy.³⁸ He testified that the Commission achieves its purpose "through the adoption and implementation of sentencing and parole guidelines, and through the establishment of a research and development program[,] which serves as a clearinghouse and information center

³² 18 Pa.C.S. § 6101, *et seq.*

³³ *Id.* at § 6105.

³⁴ *Id.* at § 6106.

³⁵ *Id.* at § 6111.

³⁶ *Id.* at § 6108.

³⁷ Pennsylvania Commission on Sentencing, *A Comprehensive Guide of Violations of Pennsylvania's Uniform Firearms Act* (2022), attached hereto as Attachment D.

³⁸ See *Public Hearing on Testimony Related to House Resolution 216 of 2022*, (Pa. 2022) ("September 30, 2022 Testimony"), attached hereto as Attachment E.

to support data collection and analysis, to conduct studies and evaluations, and to provide education and technical assistance.”³⁹

Specifically, Mr. Bergstrom described how the Sentencing Commission considered, on a statewide level, the investigation, prosecution, and sentencing of VUFA offenses.⁴⁰ He noted a specific goal of HR 111 was to “determine if these cases [VUFA offenses] are being handled adequately under the law and if changes are needed.”⁴¹ Specifically, HR 111 directed the Sentencing Commission to investigate the following six areas: (1) cases including VUFA offenses, (2) the withdrawal or dismissal of VUFA offenses, (3) sentences for VUFA offenses, (4) sentencing recommendations for VUFA offenses, (5) rearrests for VUFA offenses, and (6) violations of probation or parole for those convicted of VUFA offenses.⁴²

The HR 111 Study examined separate categories of VUFA offenses/dockets as follows:⁴³

VUFA Definitions

- (1) All VUFA dockets – dockets that contain at least one charged offense from 18 Pa.C.S. Chapter 61-A. These dockets may contain multiple VUFA charges and/or may contain a mix of other charges in addition to the VUFA offenses;
- (2) F1/F2 VUFA dockets– dockets that contain at least one charged offense from 18 Pa.C.S. Chapter 61-A that is an F1 or F2 (see Exhibit 1.1). Dockets containing F1/F2 charges from other chapters, if they do not also contain an F1/F2 VUFA offense, are excluded; and
- (3) VUFA dockets co-charged with a violent offense – dockets that contain at least one charged offense from 18 Pa.C.S. Chapter 61-A and also at least one charge of a violent offense, as defined in HR 111.

The Sentencing Commission concluded that (i) a greater share of Philadelphia VUFA dockets versus VUFA dockets in other counties contained felony charges, and (ii) a majority of VUFA dockets in Philadelphia involved violent crimes.⁴⁴ Dockets containing VUFA charges “accounted

³⁹ *Id.*

⁴⁰ The Select Committee does not endeavor to usurp the review by the House of the Sentencing Commission’s findings, but considers herein certain information related to violent crimes involving firearms in Philadelphia, as summarized in the HR 111 Study.

⁴¹ *Id.* at 1.

⁴² *Id.* at 3.

⁴³ See September 30, 2022 Testimony, PowerPoint presentation by Mark H. Bergstrom of the Pennsylvania Commission on Sentencing (“Sentencing Commission Presentation”), at 11, attached hereto as Attachment F.

⁴⁴ See Attachment D, HR 111 Study, at 18.

for 9.4 percent of all non-summary dockets filed in the Municipal Court” and “dockets with serious VUFA offenses and co-charged with a violent offense were also over-represented [compared to other counties], at 4.7 percent and 2.2 percent of all non-summary dockets (compared to 1.5 percent and 0.6 percent statewide, respectively),” with the total dockets by county shown below:⁴⁵

Exhibit 1.2: VUFA Dockets by County Class

| | All VUFA Dockets | | F1/F2 VUFA Dockets | | VUFA Dockets Co-Charged w/ Violent Offenses | |
|--------------------|------------------|---------|--------------------|---------|---|---------|
| | Total | Percent | Total | Percent | Total | Percent |
| First Class | 18,026 | 34.9% | 8,901 | 39.8% | 4,131 | 51.4% |
| Second Class | 7,365 | 14.3% | 3,195 | 14.3% | 1,031 | 12.8% |
| Second Class A | 4,566 | 8.8% | 1,643 | 7.3% | 749 | 9.3% |
| Third Class | 11,642 | 22.6% | 4,952 | 22.1% | 1,329 | 16.5% |
| Fourth Class | 4,377 | 8.5% | 1,581 | 7.1% | 394 | 4.9% |
| Fifth-Eighth Class | 5,642 | 10.9% | 2,088 | 9.3% | 399 | 5.0% |
| Statewide | 51,618 | | 22,360 | | 8,033 | |

The Sentencing Commission also looked at the attrition of cases after they were filed in Philadelphia Municipal Court (or magisterial district courts in other counties). It concluded that based on past research, the most likely reasons for attrition included evidentiary concerns, constitutionality concerns, a lack of prosecutorial resources, “trial-worthiness” and “convictability,” and “case processing norms and goals (e.g. tailoring punishments to individual/collective views of justice, circumventing sentence enhancements ...).”⁴⁶

Between 2015 and 2020, the percentage of pending VUFA cases was highest in Philadelphia and Second Class Counties. These locations also had the highest proportion of withdrawn or dismissed cases, with Second Class Counties having a higher rate in certain subcategories:⁴⁷

Municipal Court
[n= 18,026]

Total VUFA dockets
[n= 51,618]

Magisterial District Court
[n= 33,592]

Pending VUFA dockets in the Lower Courts

| | All VUFA Dockets | | | F1/F2 VUFA Dockets | | | Co-charged w/ a violent offense | | |
|--------------------|------------------|-----------------|-----------------|--------------------|-----------------|-----------------|---------------------------------|-----------------|-----------------|
| | Total Dockets | Pending Dockets | Percent Pending | Total Dockets | Pending Dockets | Percent Pending | Total Dockets | Pending Dockets | Percent Pending |
| Statewide | 51,618 | 5,183 | 10.0% | 22,360 | 2,124 | 9.5% | 8,033 | 840 | 10.5% |
| First Class | 18,026 | 3,073 | 17.0% | 8,901 | 1,311 | 14.7% | 4,131 | 541 | 13.1% |
| Second Class | 7,365 | 466 | 6.3% | 3,195 | 202 | 6.3% | 1,031 | 64 | 6.2% |
| Second Class A | 4,566 | 482 | 10.6% | 1,643 | 162 | 9.9% | 749 | 101 | 13.5% |
| Third Class | 11,642 | 665 | 5.7% | 4,952 | 286 | 5.8% | 1,329 | 97 | 7.3% |
| Fourth Class | 4,377 | 238 | 5.4% | 1,581 | 79 | 5.0% | 394 | 19 | 4.8% |
| Fifth-Eighth Class | 5,642 | 259 | 4.6% | 2,088 | 84 | 4.0% | 399 | 18 | 4.5% |

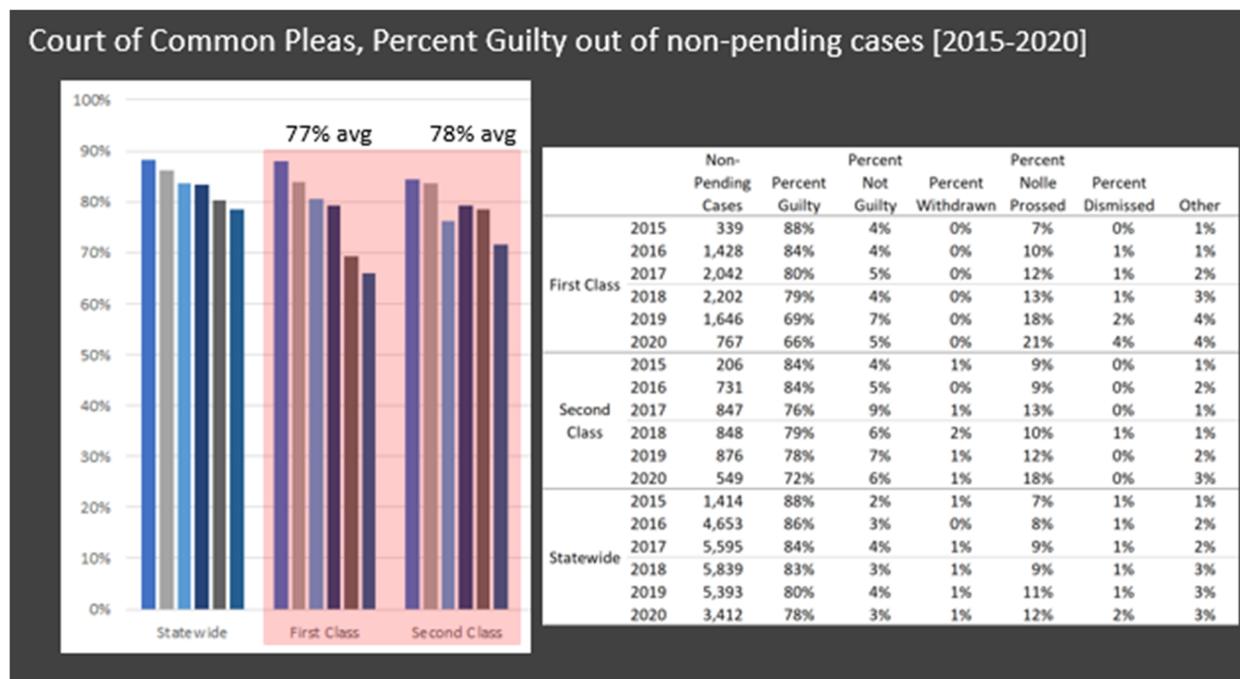
See Exhibit 2.1

⁴⁵ *Id.*

⁴⁶ *Id.* at 29.

⁴⁷ See Attachment F, Sentencing Commission Presentation, at 19.

The Sentencing Commission reported that in Philadelphia, guilty dispositions dramatically declined—from 88% in 2015 to 66% in 2020 (compared to a decline from 84% to 72% in Second Class Counties and 88% to 78% statewide).⁴⁸ The decrease in Philadelphia during DA Krasner’s administration was driven by an increase in nolle pros dispositions by the DAO disproportionate to other counties and the statewide average.⁴⁹ Indeed, in comparison to other counties and statewide averages from 2018 to 2020, Philadelphia saw a dramatic drop in the percentage of guilty dispositions, while at the same time seeing an increase in the percentage of nolle prossed cases.⁵⁰



During his testimony, Mr. Bergstrom explained that the disposition of a case without judgment may reflect discretion of prosecutors or judges:⁵¹

⁴⁸ *Id.* at 36.

⁴⁹ *Id.*

⁵⁰ *Id.* at 33.

⁵¹ *Id.* at 41.

Potential explanations for variation

This report uses administrative data to document the attrition of cases in the lower and upper courts. The proportion of dockets that are disposed without judgment may reflect the exercise of discretion by prosecutors and judges or consistent with local policies and practices. For example:

- prosecutors may withdraw or decline to pursue a charge (“nolle prosequi”) due to circumstances that make it unlikely to succeed at trial (e.g., illegal search, witness failure to appear) or a change of jurisdiction (e.g., decertification to Juvenile Court, federal adoption of firearms cases).
- judges may dismiss a charge or case based on speedy trial/due process claims from the defense.

Regardless, the data clearly shows that the percentage of nolle prossed cases in Philadelphia between 2017 and 2020 is significantly higher than the statewide totals excluding Philadelphia.⁵²

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% |

Most significantly, in 2019 and 2020, a striking 18% and 21%, respectively, of VUFA cases were nolle prossed in Philadelphia, compared to only 8% and 10%, respectively, statewide (excluding Philadelphia).⁵³

The Select Committee notes that Philadelphia’s nolle pros rates are particularly troubling given the Philadelphia local criminal rule requiring the DAO to “review[] all misdemeanor and felony charges **before** they are submitted to a judicial officer.”⁵⁴ The HR 111 Study notes that local court rules, such as Philadelphia’s practice requiring approval of charges by the DAO, may “impact the

⁵² See Data provided by the Pennsylvania Commission on Sentencing to the Select Committee on October 11, 2022, attached hereto as Attachment G (emphasis added).

⁵³ *Id.*

⁵⁴ See Attachment D, HR 111 Study, at 11 (emphasis added).

processing of cases.”⁵⁵ One may expect that if the DAO approves charges prior to police filing the charges, the DAO would be less likely to later nolle prosequi those charges. However, the data shows that the opposite is true in Philadelphia—despite the DAO’s approval of charges, the DAO nolle prosequi a significantly larger percentage of charges than the statewide average. The HR 111 Study notes this discrepancy. Information related to the DAO’s own analysis of withdrawn and dismissed cases is discussed further in Section C.3 below.

C. Various Studies Have Been Conducted to Identify Trends and Recommendations

The Select Committee is not the only entity concerned about the alarming increase in Philadelphia crime rates. In recent years, a number of organizations sponsored studies or analyses highlighting the increase in crime and decrease in prosecution plaguing Philadelphia. The Select Committee reviewed a number of these studies, including three generated locally by municipal officials in Philadelphia.

1. Explaining the Increase in Shootings

The PPD engaged the Delaware Valley Intelligence Center (“DVIC”) to conduct two studies relevant to the Select Committee’s investigation. The first, entitled “Explaining the Increase in Shootings,” sought to provide “an explanation for the increase in homicides and shootings in an effort to begin a conversation to address the challenge at a strategic level.”⁵⁶ *Significantly*, the report notes:⁵⁷

Lenient criminal justice responses may be occurring, as a result of recent criminal justice reforms overall. Alternatively, *new prosecutorial policies and decision-makings under a new DA may also play a significant role*. A recent analysis of prosecution and court dispositions provides supporting evidence for this hypothesis, but also shows this trend prior to DA Krasner.

The rate of prosecution dismissal and withdrawal has been increase [sic] substantially since 2015 under DA [Seth] Williams, and has continued to increase after DA Krasner took office. Furthermore, a closer examination of these dropped cases indicates that more cases are dismissed/withdrawn at the preliminary hearing state [sic] under DA Krasner than the actual trial state []. *This implies that, even when criminals are caught with a gun, they are swiftly finding out they may not receive as significant a consequence as they had*

⁵⁵ *Id.* at 1. Philadelphia is in the vast minority of Pennsylvania counties which requires prosecutor approval for all misdemeanor and felony charges—only one of seven counties out of 67 statewide.

⁵⁶ *Explaining the Increase in Shootings* (“DVIC Shootings Report”), Delaware Valley Intelligence Center, PPD000247, attached hereto as Attachment H.

⁵⁷ *Id.* at PPD0000248 (emphasis added).

historically. Notably, the likelihood of being arrested is low to begin with. This means that, *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.*

Consistent with the data presented by the Sentencing Commission, the DVIC Shootings Report concluded that “dismissal/withdrawal appears to be occurring more frequently at the preliminary hearing stage”⁵⁸ The DVIC further conducted a “ cursory examination” of dismissed/withdrawn cases in 2018/2019 and “found 6 offenders whose cases were dismissed (VUFA former convict charge) and got later involved in shootings.... 2 of these shootings were fatal and 4 out of these 6 offenders were gang members.”⁵⁹ The DVIC concluded: “If it is true that potential offenders are more willing today to carry firearms than they were historically, then strategic conversations may be needed between the Police Department and the District Attorney’s Office to establish a strategic approach to address the problem.”⁶⁰

2. Analysis of Prosecution Declination

The second of the two studies conducted by the DVIC for the PPD, entitled “Analysis of Prosecution Declination,” focused on declinations of narcotics, retail theft, and prostitution arrests from 2016 to 2018.⁶¹ The DVIC concluded in its key findings that the percentage of *all* declinations (not just narcotics, prostitution, and retail theft) increased “especially in 2018” to over 7%, when it had been just 2% or less between 2007 and 2015.⁶² The dramatic increase coincides with DA Krasner’s initial year of service. Concentrating specifically on narcotics, prostitution, and retail theft, the declinations increased significantly, reportedly with the reason of the “interest of justice” being provided for the vast majority of the declinations beginning in 2018.⁶³ According to the DAO’s website, “withdrawn in the interest of justice” means:⁶⁴

⁵⁸ *Id.* at PD0000249.

⁵⁹ *Id.*

⁶⁰ *Id.* at PPD00000250.

⁶¹ *Analysis of Prosecution Declination* (“DVIC Declination Report”), Delaware Valley Intelligence Center, PPD00000232, attached hereto as Attachment I.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Definitions*, Philadelphia District Attorney’s Office, <https://data.philadao.com/definitions.html#dismissedwithdrawnetc> (last visited Oct. 16, 2022).



WITHDRAWN IN THE INTEREST OF JUSTICE

There are times when withdrawing a case can better serve the goals of the criminal legal system than continuing to prosecute a case.

Some examples of why a case may be withdrawn in the interest of justice include:

- Withdrawal of a drug possession case where the defendant has shown proof of seeing a treatment provider.
- Withdrawal of a less serious domestic violence case where the victim does not want to continue with the prosecution and the defendant has shown proof of attendance at anger management classes or has completed significant community service hours.
- Withdrawal of a minor case against a non-citizen where the immigration consequences of a conviction would far outweigh the gravity of the crime.
- Withdrawal of a minor offense against a person in custody in another state for a serious offense (e.g. a person is currently held for a murder trial in Texas, but also has an open retail theft case in Philadelphia).
- Withdrawal of a drug possession case for a first time offender.

The DAO has been withdrawing cases in the interest of justice for decades, to help the DAO manage caseloads, to avoid over-penalizing people, and to find create ways to allow for diversion-like programs when diversion may not be available for an individual. This is a process that has never been formally tracked within the District Attorney's Office, so it is likely that we are undercounting Withdrawals in the Interest of Justice. For the purpose of the Dashboard, we mark a case as Withdrawn in the Interest of Justice if the disposition of the case is withdrawn and the withdrawal took place in CJC room 404.

However, the DAO did not produce any policies with respect to determinations to be made by ADAs regarding cases to be “withdrawn in the interest of justice.”

3. The 100 Shooting Review Committee Report

Recognizing the dramatic increase in shootings across the city, Philadelphia City Council passed Resolution #200436 in September 2020 to authorize the Committee on Public Safety and the Special Committee on Gun Violence Prevention to hold hearings on gun violence.⁶⁵ The resulting effort led to a collaboration between the Controller's Office, Defender Association, Department of Public Health, DAO, First Judicial District, Managing Director's Office, Pennsylvania Attorney General, and PPD.⁶⁶ The published results of this collaboration, entitled the “100 Shooting Review Committee Report,” discusses trends and general findings regarding shootings in Philadelphia, as well as recommendations. The Select Committee takes note of the following findings from this report.

First, the PPD analyzed, among other things, clearance rates (i.e., when an arrest is made or a suspect that could not be arrested is identified) in homicides and non-fatal shootings.⁶⁷ The 100 Shooting Review states that “[o]ut of 11,306 shootings in Philadelphia since 2015, 8,918 did not

⁶⁵ See 100 Shooting Review Committee Report (“100 Shooting Review”), at 5, <https://phlcouncil.com/councilmember-curtis-jones-jr-releases-a-report-on-the-findings-and-recommendations-of-the-100-shooting-review-committee/>, attached hereto as Attachment J.

⁶⁶ *Id.*

⁶⁷ *Id.* at 7.

result in arrest[.]”⁶⁸ That is, the clearance rate was approximately 21% for all shootings in 2015. In 2020, the clearance rate for fatal shootings was 37% and the rate for non-fatal shootings was just 18%; and in 2021, those rates were 28% and 17%, respectively.⁶⁹ The 100 Shooting Review further concludes that improving the clearance rates for fatal and non-fatal shootings should be the “first priority as a city.”⁷⁰ The 100 Shooting Review suggests that one of the reasons for the low clearance rates is capacity constraints in the PPD with respect to investigating shootings, as there is a maximum number of cases that can be investigated by the PPD at any given time. The Review recommends organizational changes to the PPD.⁷¹

Second, the 100 Shooting Review analyzed conviction rates in cleared gun cases. Echoing the HR 111 Report, the 100 Shooting Review begins with the observation that the “*withdrawal and dismissal rates in a broad range of gun cases has increased while the conviction rate has decreased.*”⁷² The 100 Shooting Review finds that conviction rates in shooting cases declined between 2016 and 2020—from 96% to 80% in fatal shootings and from 69% to 64% in non-fatal shootings.⁷³ It also finds that there is a long-term trend of a reduction in conviction rates for illegal gun possession cases, dropping from 65% in 2015 to 45% in 2020.⁷⁴

For purposes of the investigation conducted in preparing the 100 Shooting Review, the DAO reviewed 380 dismissed and withdrawn illegal gun possession cases.⁷⁵ The DAO’s review involved “only cases that were dismissed or withdrawn in municipal court (MC), either before or at a preliminary hearing.”⁷⁶ The cases reviewed included those with a lead charge of illegal possession, robbery plus illegal possession, or aggravated assault plus illegal possession, but did not include homicide cases.⁷⁷ The DAO reported that people “not appearing in court, especially victims and witnesses” resulted in approximately half (52%) of all gun possession cases dismissed or withdrawn in municipal court.⁷⁸

The Select Committee spoke with individuals who expressed serious concerns about the number of gun (and other) cases dismissed or withdrawn due to the failure of victims or witnesses to appear in court. For example, former ADA Chris Lynett shared with the Select Committee that the failure of victims and witnesses to appear in court can be attributed in part to the lack of training that ADAs receive with respect to how to try a case, including the important element of how to find victims or witnesses and ensure that they appear. Former ADA Jill Roth shared similar concerns

⁶⁸ *Id.* at 33.

⁶⁹ *Id.* at 7.

⁷⁰ *Id.* at 33.

⁷¹ *Id.* at 36.

⁷² *Id.* (emphasis added).

⁷³ *Id.* at 8.

⁷⁴ *Id.*

⁷⁵ *Id.* at 158. The Select Committee spoke with former Philadelphia ADA Thomas Bello, an experienced ADA, who shared that he played a role in the review of these cases.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

regarding the DAO's communications with victims and witnesses. The 100 Shooting Review references strategies, including grants that the DAO has applied for, to improve technology with respect to tracking and notifying victims and witnesses.⁷⁹

The DAO also reported in the 100 Shooting Review that a higher rate of constructive possession cases partially explains the rate of withdrawn or nolle prossed cases.⁸⁰ Specifically, in 2016 to 2017, the defendant was not seen with a gun in 28% of cases dismissed and withdrawn; that rate increased to 35% in 2018 to 2019.⁸¹ The DAO concluded this is partially related to an increase by the PPD in vehicle stops, with guns being recovered from vehicles in 55% of withdrawn or dismissed cases between 2016 and 2017, and 67% between 2018 and 2019.⁸²

The 100 Shooting Review includes recommendations that would require cross-office/department collaboration (including, *e.g.*, between the PPD and DAO) in their implementation and funding.⁸³ The 100 Shooting Review summarizes collaboration between the DAO and PPD to date and concludes that the further development of a partnership and collaborative processes and practices is necessary to address the decreasing conviction rate.

D. The PPD is Understaffed

According to a recent investigative report by the *Philadelphia Inquirer*, the PPD is operating at 20% below its target staffing level, with nearly 800 employees set to retire within four years.⁸⁴ Commissioner Outlaw is widely quoted, noting proper staffing is necessary for a more “visible presence.”⁸⁵ She went on to state that police morale is low, “which she attributed in part to politics and increased scrutiny.”⁸⁶ She noted that “police response times have slowed since 2020,”⁸⁷ a fact the Select Committee has heard from multiple sources. Commissioner Outlaw shared similar concerns earlier this year, stating “[t]he truth is the homicides are not happening in a vacuum – there are those out there who are determined to attack and kill their victims. While we are making constant adjustments to mitigate this sickening reality, our officers, simply put, just can’t keep up by being everywhere at all times.”⁸⁸

⁷⁹ *Id.* at 44-45.

⁸⁰ *Id.* at 158.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* at 9.

⁸⁴ *The Pennsylvania Police Department is short 1,300 officers. Here’s why the situation is about to get worse*, *Philadelphia Inquirer*, (Aug. 28, 2022), <https://triblive.com/news/pennsylvania/the-philadelphia-police-department-is-short-1300-officers-heres-why-the-situation-is-about-to-get-worse/>.

⁸⁵ *Id.*

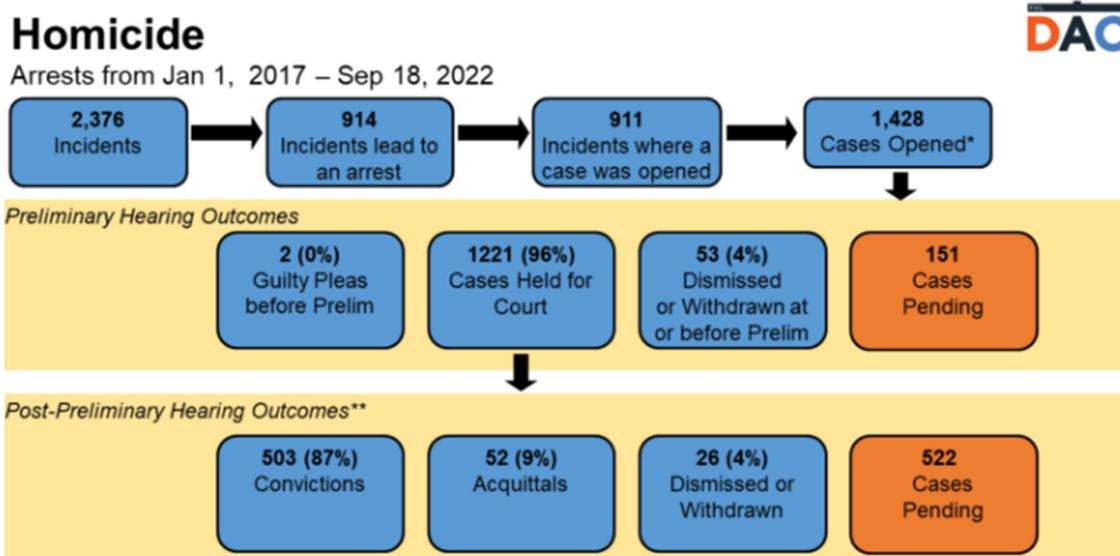
⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Peter Crimmins, *Philly police ‘can’t keep up’ with rising homicide rate, Outlaw says*, WHYY PBS, (Mar. 30, 2022), <https://whyy.org/articles/philly-police-cant-keep-up-with-rising-homicide-rate-outlaw-says/>.

In addition to politics and increased scrutiny, the article cited Philadelphia’s “uniquely stringent hiring requirements and a nationwide shortage that has made the market for recruits more competitive” as a cause of the staffing shortage.⁸⁹ For example, a 2020 City Council law requires that PPD applicants be residents of Philadelphia for one year *prior to applying*. This policy contributed to a 30% reduction in applications, and the Mayor’s office ultimately waived the requirement for new PPD employees.⁹⁰ City Councilmember Derek Green further commented on the issue, stating that PPD officers’ starting salaries are below the national average and that the pay gap is a major reason for the staffing shortage.⁹¹

As introduced in the 100 Shooting Review, the staffing issues facing the PPD impacts the low clearance rate for fatal and non-fatal shootings. With respect to homicides specifically, the DAO reports the following data for January 1, 2017 through September 18, 2022, which highlights the total numbers of homicides that resulted in an arrest:⁹²



* Multiple cases may be opened from a single incident. These numbers also include 9 cases transferred to juvenile court. Data current through September 18, 2022.
** Sometimes when cases are held for court and they involving a single defendant, they are consolidated from multiple cases with different docket numbers into a single docket number. The number of cases in the Post-Preliminary Hearing Outcomes box may not add up to the total number of cases held for court for this reason.

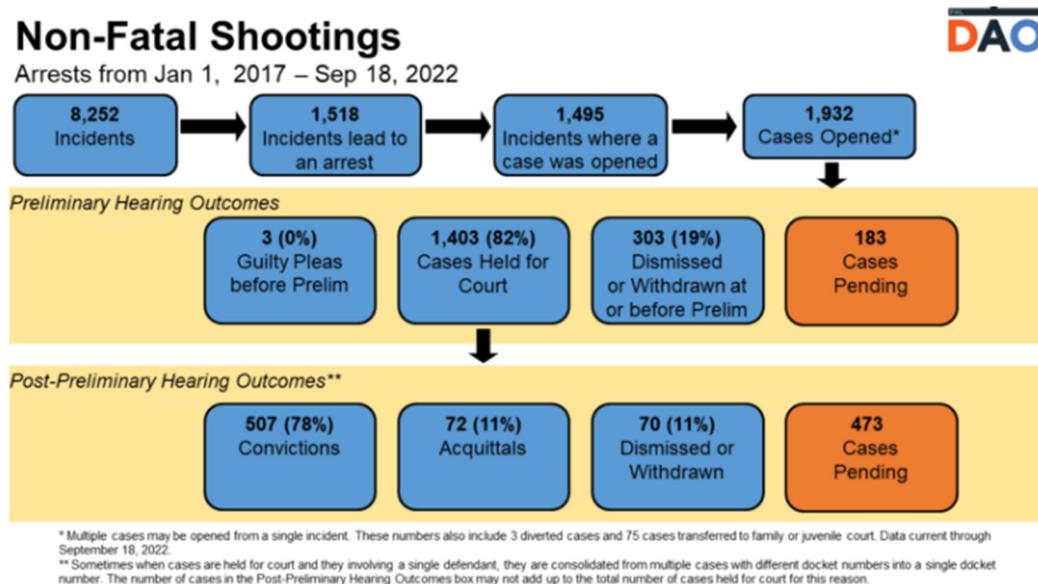
⁸⁹ See, supra, note 84.

⁹⁰ Id.

⁹¹ Councilmember Green Responds to the Lifting of the City’s Residency Requirement for Police, Correctional Officers, PHL Council, (Apr. 7, 2022), <https://phlcouncil.com/councilmember-green-responds-to-the-lifting-of-the-citys-residency-requirement-for-police-correctional-officers/>.

⁹² Outcomes from Preliminary Hearings & Post-Preliminary Hearings for Homicide & Non-Fatal Shooting Cases, Explained, Philadelphia District Attorney’s Office, (Sept. 22, 2022), <https://phillyda.org/outcomes-from-preliminary-hearings-post-preliminary-hearings-for-homicide-non-fatal-shooting-cases-explained/>.

With respect to non-fatal shooting cases for the same period, the DAO reports:⁹³



Notably, with respect to homicides and especially non-fatal shootings, a significant number of incidents did not lead to arrests. ***A jaw-dropping 81% of non-fatal shootings and 61.5% of fatal shootings did not result in arrests.*** This alarming fact demands stakeholders across Philadelphia—City Council, the Mayor's office, the DAO, and the courts—redouble efforts to drive down this horrific statistic.

On October 18, 2022, Controller Rhynhart published the “Review and Analysis of the Philadelphia Police Department and Other Related Police Spending,” which, among other things, identified organizational and operational challenges of the PPD.⁹⁴ The Select Committee is evaluating potential recommendations in its ongoing investigation to address this issue, including additional support for the Philadelphia Police Department and other law enforcement agencies in the city.

II. PHILADELPHIA RESIDENTS ARE SUFFERING

The Select Committee recognizes the impact that rampant crime and lawlessness has on everyone in Philadelphia. During the September 29, 2022 public hearing, the Select Committee dedicated significant time to hearing directly from those who, through no fault of their own, have found themselves a victim of a violent crime. Chairman Lawrence opened the hearing noting the “increase in crime has led to a decline in the quality of life of everyone in Philadelphia” and “it is inarguable that the City cannot move forward to the bright future its residents richly deserve when they don’t feel safe riding SEPTA, going to the grocery store, walking to school, sitting on their

⁹³ *Id.*

⁹⁴ Rebecca Rhynhart, *Review and Analysis of the Philadelphia Police Department and Other Related Police Spending*, (Oct. 18, 2022), <https://controller.phila.gov/philadelphia-audits/ppd-review/#/executive-summary>.

front steps, or attending a high school football game.” The Chairman continued, “victims of crime are far too often left in the shadows without a voice. This Committee is here to listen and to act.”

The Pennsylvania House Republican Caucus created a website⁹⁵ to solicit information from Philadelphia victims of crimes, individuals who do not feel safe, and those who believe DA Krasner’s policies failed to protect them and their loved ones. The website includes a form to allow individuals to submit details regarding those experiences. Submissions were provided to the Select Committee. To protect the privacy of the individuals who provided information, the Select Committee has not attached these submissions verbatim to this Second Interim Report. However, various accounts shared with permission to the Select Committee, as well as those provided during the public hearings, are summarized below. Due to the nature of their traumatic experiences, names have been withheld or changed if the individual did not agree to testify at the public hearing.

At the public hearing on September 29, 2022, Ms. Nakisha Billa testified in person regarding the murder of her son Dominic at the Franklin Mills Mall. Ms. Billa testified that she appeared before the Select Committee “[s]hattered and broken.” Her son Dominic, who was 19 years old, was buying clothes for an interview for a union apprenticeship when he was senselessly shot and killed at the mall. Dominic’s murderer was arrested, charged, and is currently awaiting trial. Ms. Billa agreed to testify before the Select Committee because of the “lawlessness that continues to plague the city.” Though Ms. Billa testified that she was initially excited for DA Krasner to take office, she now believes “[s]laps on the wrist are given for violent crimes” as a result of the DAO policies. She said that her son’s murderer had a long rap sheet, and if he had been convicted of prior charges, her son would still be here today. She also testified that she did not receive any follow-up from the police investigating her son’s murder or any other city or state agencies offering support after the initial case was filed. She had to seek out organizations to provide support to her. Despite being a native of Philadelphia, Ms. Billa testified forcefully that she “wants out” of Philadelphia.

At the public hearing on September 29, 2022, the following witnesses testified by video:

Karen McConnell testified that her granddaughter, Jailene Holton, was murdered on June 28, 2022, while she was out with friends at a bar in Northeast Philadelphia. A man fired 15 shots into the bar, striking her granddaughter in the head. After an investigation, the police identified the shooter and arrested him at a casino in Atlantic City. Ms. McConnell said that the shooter was accused of rape two years prior but was acquitted. She believes that the prior case against him was not successful because it was handled by a newer ADA who did not have enough experience to successfully secure a conviction. She believes that if the DAO’s office had done its job, her granddaughter would still be alive today. Ms. McConnell directly blames DA Krasner and his office for failing to convict criminals and believes that DA Krasner and his administration are dropping charges against repeat offenders that they should be prosecuting. Ms. McConnell testified that her granddaughter was a sweet girl with a bright future.

⁹⁵ *See Are you a victim of crime in Pennsylvania?* Pennsylvania House Republican Caucus. www.pahousegop.com/stopkrasner (last visited Oct. 22, 2022).

Tiffany Flynn testified that on August 16, 2021, her daughter Ojanae Tamia Thompson was murdered as a passenger in a car entering a Shop Rite parking lot with the intent to buy groceries. Three young men approached the vehicle and shot her three times, including one time in the head. Despite the presence of video cameras, the police have been unable to identify the perpetrators of her daughter's murder. She testified that she is trying to get answers for her daughter's case to apply that information to prevent future killings. She believes people feel like they can get away with these crimes. She said that she looks to the DAO to find answers and to help the situation. Ms. Flynn explained that her daughter was an educated and motivated person, who did not deserve to be killed. Ms. Flynn added that she lives only blocks from the location of her daughter's murder and often drives by Shop Rite seeing young children riding their bicycles. She fears for their safety. In addition, she stated that since she moved to her neighborhood in 2006, the situation has deteriorated and that it is "insane" to see shootings occur so often. She no longer feels safe sitting outside her house and sees children walking home from school dodging bullets.

Malikah Womack and her father Robert Womack testified that on July 26, 2021, Ms. Womack's daughter Jada Hellams was stabbed and killed in Olney. She testified about the emergency care her daughter received, but that she ultimately succumbed to her stab wounds and died. Ms. Womack testified about how much she misses her daughter and stated that the detective on the case never reached out to her. She still does not have any information regarding what led to her daughter's death. The person who stabbed Ms. Womack's daughter was arrested as soon as her daughter died. After the suspect spent a year in jail, Ms. Womack went to court, and the ADA on the case provided evidence, including testimony of one of the two witnesses. Ms. Womack felt that the defendant who killed her daughter was inappropriately released on bail. She said that no one, including the ADA, informed her that the defendant had received bail, and that when she called the ADA, she was told that the ADA was unaware of the release. Ms. Womack said that after being released on bail, the defendant was again arrested for assault while the charges for her daughter's stabbing were still pending. The defendant again received bail, and until informed by Ms. Womack, the ADA was unaware of the additional charges and release. Ms. Womack also said that the ADA informed her that Philadelphia "does not do" first degree murder charges. Ms. Womack went on to recall that as a young person, she did not like former DA Lynne Abraham because she "throw[s] people in jail," but now she has a better appreciation for Ms. Abraham's approach and feels DA Krasner is too lenient. She concluded by describing her pain as an "everlasting pain that will never go away" and said that she feels that the DAO is on the side of the criminals and not the victims.

Jennifer Meleski and Dean Maude testified regarding their son and stepson Chuckie who was murdered while sleeping in his car on March 12, 2022. No arrests have been made in his murder. He was on life support for two days before passing, at which time his death was declared a homicide. Ms. Meleski and Ms. Maude testified that they felt that the investigation into Chuckie's death was insufficient. Ms. Meleski stated that she believes younger kids are committing crimes now because there are no repercussions. Older kids are walking around with guns, in plain sight, and police officers have their hands tied. She also testified that there are addicts who are openly doing drugs without any repercussions. She believes that this perpetuates the problem of drug dealers coming to Philadelphia and causing problems, because they do not

care that they are destroying a neighborhood that is not their neighborhood. Ms. Meleski testified that her life will never be the same and that she tries to live for her other kids and grandkids.

One individual provided a written statement to be shared by the Select Committee at the public hearing:

I was born and raised in a suburb outside Philadelphia and was excited to purchase my first home in south Philly in December 2018.

After the first two weeks of the pandemic, I started working out with two neighbors outside to stay active during quarantine. On March 31, 2020, at around 4:30 in the afternoon, we started our workout by running up and down the block and then doing exercises on the sidewalk. Within the first 15 minutes of our workout, a gang related shooting started between two groups of people. While we were totally unrelated to the gang activity and minding our own business with a workout, we were caught in the crossfire. It was terrifying to go from enjoying a spring afternoon outdoors to running to take cover behind a car. I was hit with one of the bullets and shot in my chest. I sustained injuries to multiple ribs and my left lung. I'm very fortunate to have been picked up by a police officer and rushed to a local trauma center so I could receive the lifesaving care that I needed. After a week of hospitalization, I came back to my home in south Philly in an attempt to return to normalcy. The entire shooting, which occurred in broad daylight, was caught on camera. Unfortunately, no arrests were made and I was never contacted by the district attorney's office.

Prior to and following this incident, my car has been broken into multiple times. I never reported it to local police because I knew the city wouldn't do anything. My insurance and registration card have been stolen in addition to valuable items taken from my trunk. When my car was broken into in September 2019, the intruder smoked multiple cigarettes using my cup holder as an ash tray. I'm currently (Sept 2022) abroad for a work trip, and have looked forward to getting away from Philly for a few weeks, only to be contacted by a neighbor who informed me that my car was broken into.

After the 2020 incident, I turned on citizen alerts (an app that informs you of local crime) so I could be aware of what's going on in different areas of Philadelphia. I had to turn the notifications off after a week because it was constant notifications of shootings, car jackings and assaults which I found triggering. A day does not go by where there isn't violent criminal activity in Philadelphia. I intend on leaving Philadelphia as I no longer feel safe here and will urge anyone I love to do the same.

The following individuals were interviewed by the Select Committee and/or counsel during the course of the investigation:

Lisa S. is a resident of the Washington Square West area of Philadelphia. In the fall of 2019, she became aware of a break-in at her neighbor's house at around 3:00 a.m. After learning of similar

incidents in her neighborhood, Lisa attended a civic safety meeting, at which the police recommended that citizens conceal and carry a handgun or knife. Since the fall of 2020, Lisa shared that there had been multiple shootings near her home and many carjackings in her neighborhood, and, as a result, she no longer feels safe walking outside at night. In February of 2022, Lisa was approached at her front door by young men, one armed with a gun, who stole her money, phone, and car. The individual who had the gun is in the process of considering a plea deal for two years in juvenile detention, and the charges were dismissed against the other two teenagers. She does not believe there is as significant as a police presence in her neighborhood as in the past. She believes there needs to be more accountability for crimes. As a result of the current crime surge, she believes fewer people come to visit the city and that business owners are forced to close earlier in the day.

Dolores W. is a resident in the Upper Frankfurt area of Philadelphia and resides in a neighborhood called Northwood. She stated that there have been multiple instances where her and her husband's vehicles were broken into and that approximately five years ago, their house was burglarized. Most recently, in May of 2022, Dolores stopped at an ATM to withdraw money for graduation gifts. Immediately after she withdrew the cash, two teenage boys walked up to her. One of the teenagers pulled a gun out, put it to her head, and snatched the cash from her hand. She drove home and reported the incident to the police, who she described as very helpful. As far as she knows, the perpetrators have not been caught. Since the incident, Dolores does not walk alone outside and her husband prefers that she not get gas for their vehicles alone. She assumes that everyone has a gun. She reported that there are many crimes reported in the local groups who share news regarding the neighborhood on social media. Dolores works for a health center that has a location in Kensington, and she reported that the health center's security guards arrive two hours before they open to clear out the drug dealers so patients can enter. Dolores expressed sympathy for the police force and their lack of staffing. She opined that additional training regarding racially-related issues may be necessary. She believes that greater collaboration between key stakeholders, such as the Mayor's office and other community leaders, is the key to improving the crime rate. She provided an example regarding a taskforce created by the Mayor to fight the opioid crisis that she believes was initially effective but has since lost steam.

Sam L., his wife, and three young children reside in the Old City section of Philadelphia. Sam shared that he and his wife have noticed increased disorder in their neighborhood. Specifically, his wife has had to call the police a few times as a result of aggressive unhoused people, and the CVS stores near their house have had to shorten their hours because of rampant shoplifting. Sam described a particular Saturday night where the fire alarm woke them up. His wife encountered an unwell man in their home who began to struggle with her and her two young children. He was able to get the person out of his house, and the police arrived within two to three minutes to arrest the man, who was taken away by ambulance. Sam later learned that the suspect was released from the hospital and that the police had not made any efforts to identify him, which caused Sam to feel as though his family was victimized a second time. The perpetrator of the crime has not been identified or arrested. As a result of the incident, Sam and his family intend to move out of Philadelphia. Sam reported that the PPD and the DAO appeared to be in conflict regarding responsibility for identification of the suspect.

Jennifer A. shared that her son was at a friend’s house one day in December, and after stopping for gas, her husband and son were tailed all the way home. After her husband got out of the car, one of the men who had tailed him pulled out a gun and pointed it at him. A second gunman arrived, and her husband and son had to fight them away. Jennifer was upstairs with her daughter decorating for Christmas, when she heard her son say: “What are you going to do, kill my dad?” Jennifer retrieved her own weapon, and her son entered the house to hide in a closet with her daughter. The two perpetrators drove off with her husband’s car and wallet. The police are actively attempting to identify the suspects. The getaway driver was ultimately arrested, but the case was dismissed for lack of evidence. As a result of the incident, Jennifer reported that her husband and son have been deeply impacted and traumatized.

Allison B. is a fifth generation Philadelphian and has been a resident for over 27 years until she was forced to move in response to crime in her neighborhood. Allison described the impact of living in a house next to an individual who used, and likely dealt, drugs. After acting as an informant, she was subjected to harassment from her neighbors, and when she attempted to reach out to the DAO for assistance and to file a private complaint, she received no response. Allison believes that crime in Philadelphia is out of control as a direct result of DA Krasner’s policies.

The above individuals, unfortunately, represent merely a handful of those affected by Philadelphia’s recent crime wave.

III. PHILADELPHIA’S ECONOMY IS SUFFERING

In 2019, Controller Rhynhart published a “Report on the Economic Impact of Homicides.”⁹⁶ The study analyzed all homicides (4,121) and more than 220,000 residential property sales between 2006 and 2018. Recognizing that the homicide rate in a neighborhood is “clearly not the only factor affecting sales price[,]” the Controller nonetheless noted:⁹⁷

[1] On average, sales that occur closer to a homicide tend to have lower prices than sales that occur farther from a homicide. Our results indicate that ***a single homicide lowers sale prices by 2.3 percent in the immediate neighborhood*** (within 0.75 miles of the homicide). Therefore, a reduction of one homicide would lead to a corresponding 2.3 percent increase of sale prices in the immediate neighborhood.

[2] ***A single year reduction of homicides by 10 percent translates to about a \$13 million increase in property tax revenue.*** Reducing homicides by 10 percent annually for five years translates to a total

⁹⁶ Rebecca Rhynhart, *Report on the Economic Impact of Homicides*, (Oct. 23, 2019), <https://controller.phila.gov/philadelphia-audits/economic-impact-of-homicides/>.

⁹⁷ *Id.* at 1, 7 (emphasis added).

increase of \$114 million in property tax revenue, including \$43 million in year five alone.

But the homicide rate has not reduced since 2019—it has risen, sharply.

The Controller’s 2019 Report concluded that “[w]ith any meaningful reduction in gun violence, the City would likely experience a number of secondary economic benefits, in addition to increasing property tax revenue.”⁹⁸ According to the Controller, “Research shows that reducing gun violence could positively impact business disinvestment, job loss and depopulation in the most disadvantaged neighborhoods in the city.”⁹⁹ She recommended that “meaningful progress will require a coordinated and well-funded partnership between the mayor, community stakeholders, the district attorney, the police department, and the courts, with due consideration given to victims of this violence and their families.”¹⁰⁰

In addition, local businesses have reported the impact of increased crime has detrimentally affected their operations. Manzoor Chughtai, president of the Franchise Owners Association, said that 15 to 20 stores have closed in the city in response to shoplifting incidents.¹⁰¹ Starbucks widely reported that it would close several stores, including one in Philadelphia at 10th and Chestnut Streets, because of the inability to feel safe at work.¹⁰² Delaware-County based Wawa, a respected regional powerhouse with deep and long-standing ties to Philadelphia, has seen almost daily headlines reporting store closures, robberies, reduction in hours, and violent incidents in their stores across the city. After significant investment into flagship stores in downtown Philadelphia a few years ago, Wawa just announced the closure of two stores in Center City due to “external operating challenges,” including safety and security challenges.¹⁰³ According to news reports, there were 42 recent incidents at the Wawa on 19th and Market Street, 34 of which were thefts.¹⁰⁴ The Wawa on 12th and Market Street had 19 reported incidents, 15 of which were thefts.¹⁰⁵ Wawa has 40 stores in Philadelphia, and since September of 2020, the number of thefts at those stores doubled from 311 to 687.¹⁰⁶ The Select Committee believes these numbers grossly underestimate the actual number of thefts occurring in these stores.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 2.

¹⁰¹ Mark Makela, *Philadelphia businesses ‘closing left and right’ over increase in shoplifting*, NY Post, (May 20, 2022), <https://nypost.com/2022/05/20/philadelphia-businesses-closing-over-increase-in-shoplifting/>.

¹⁰² *Letter from Debbie Stround and Denise Nelse, senior vice presidents of U.S. operations for Starbucks*, Starbucks Stories and News, (July 11, 2022), <https://stories.starbucks.com/stories/2022/message-to-starbucks-partners-safety-in-our-stores/>.

¹⁰³ Monica Herndon, *Wawa is closing 2 stores in Center City, citing safety concerns*, Philadelphia Inquirer, (Oct. 14, 2022), <https://www.inquirer.com/news/philadelphia/wawa-closing-philadelphia-center-city-safety-20221013.html>.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

The Select Committee also heard from Philadelphia residents concerned about retail thefts at local stores. For example, Sam L. (referenced above) said that the CVS at 3rd and Market Street now locks up practically everything to attempt to prevent theft. He said the store has shortened its hours because shoplifting is so out of control, and described the area around 3rd and Market as a “zone of lawlessness.” He specifically recalled an incident involving a homeless man sitting outside of the store, harassing customers (once urinating into a washrag in front of patrons). Sam was not the only person to reference this particular CVS. One woman interviewed said that people fill up bags with merchandise and walk right out the door. She said CVS’s policy is not to stop shoplifters given employee safety concerns.

IV. THE SHARP INCREASE IN CRIME CORRESPONDS WITH DA KRASNER’S IMPLEMENTATION OF PROGRESSIVE POLICIES AND OVERHAUL OF THE DAO

Prior to DA Krasner’s administration, Seth Williams served as the Philadelphia district attorney from January 4, 2010, to June 29, 2017. He left office after an indictment for federal crimes, at which time Kelley B. Hodge held the office on an interim basis. DA Krasner was elected in the general election on November 7, 2017. He campaigned with a self-described platform seeking the “progressive reform of Philadelphia’s criminal justice system.”¹⁰⁷ He served a two-year term and was reelected on November 2, 2021, with approximately 69.1% of the vote. His current term ends on January 5, 2026.

DA Krasner campaigned on a platform seeking to change the culture of the city’s criminal justice system from one seeking victory for prosecutors to a system seeking justice for victims.¹⁰⁸ In an effort to end mass incarceration, he promised to stop prosecuting what he refers to as “insufficient” and “insignificant” cases.¹⁰⁹ He further expressed his belief that over-prosecution clogs the courts, delays trials, and contributes to Philadelphia’s high incarceration rate.¹¹⁰ DA Krasner promised to decline to prosecute cases forwarded by the police that lack support by sufficient and legally obtained evidence.¹¹¹ He also promised to eliminate cash bail and stated that he would not pursue the death penalty because he believes that capital punishment is expensive, ineffective, and racially biased.¹¹² True to his word, DA Krasner has implemented many of these policies. The impact of these decisions can be seen throughout this Second Interim Report, and in Philadelphians’ lived experiences.

DA Krasner’s philosophies, and those of other progressive prosecutors across the country, have been widely criticized. For example, Thomas Hogan, a former prosecutor at the state and federal level, conducted a study entitled “De-prosecution and death: A synthetic control analysis of the

¹⁰⁷ See *Real Changes to the DA’s Office*, Larry Krasner for District Attorney, <https://krasnerforda.com/platform> (last visited Oct. 11, 2022).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

impact of de-prosecution on homicides,” in which he specifically focused on the de-prosecution of crime in Philadelphia pursuant to the adoption of progressive policies between 2015 and 2019.¹¹³ For purposes of his study, de-prosecution included the categorical decision not to prosecute certain crimes, the decision not to charge a crime, the decision to nolle pros at a preliminary hearing, and the dismissal of charges at any point in the proceeding thereafter.¹¹⁴ Mr. Hogan stated that de-prosecution is “a potent tool, wielded with no external oversight and outside of the normal adversarial process of the U.S. criminal justice system.”¹¹⁵

After a statistical analysis, Mr. Hogan concluded that the “de-prosecution strategy is associated with an increase in homicides in Philadelphia.”¹¹⁶ He speculated that as “would-be offenders realize that they will not be prosecuted for certain offenses and that the police are engaging in lesser efforts to arrest them,” they may more likely become repeat offenders, with some of their behavior leading to homicides. He also opined that witnesses may be increasingly reluctant to testify at trials and that experienced prosecutors may become unwilling to work for the administration, leading to fewer prosecutions and more homicides.¹¹⁷

Consistent with the Sentencing Commission’s analysis of VUFA charges discussed in Section I.C, Mr. Hogan wrote that one of the “most accepted risk factors for murder historically ha[s] been weapon possession,” and concluded that the decreased number of convictions for VUFA felonies by the DAO could lead to a “specific category of potential homicide offenders not incapacitated.”¹¹⁸ He also said that because “homicides in Philadelphia, like in other large urban centers, have direct ties to drug trafficking organizations, the DAO’s policy not to prosecute certain drug charges could “result in a lack of witnesses and sources of information necessary to solve and prosecute homicides.”¹¹⁹

Overall, Mr. Hogan’s findings confirm the positions of concerned former ADAs and victims interviewed by the Select Committee when he concludes that the “de-prosecution strategy as used in Philadelphia undermines deterrence, resulting in more homicides,”¹²⁰

A. DA Krasner Purged the Office of Institutional Knowledge

Upon taking office, DA Krasner terminated more than 30 ADAs, many of whom the Select Committee understands had significant prosecutorial experience and knowledge.¹²¹ The Select

¹¹³ Thomas Hogan, *De-prosecution and death: A synthetic control analysis of the impact of de-prosecution on homicides*. 21 CRIMINOLOGY & PUB. POL’Y 489 (2022), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1745-9133.12597>.

¹¹⁴ *Id.* at 492-93.

¹¹⁵ *Id.* at 492.

¹¹⁶ *Id.* at 513.

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 514.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ See Chris Palmer, Julie Shawn, and Mensah M. Dean, *Krasner dismisses 31 from Philly DA’s Office in dramatic first-week shakeup*, Philadelphia Inquirer, (Jan. 5, 2018),

Committee’s investigation included interviews of some of these former ADAs, along with former ADAs who served under DA Krasner. These ADAs spoke to the results of DA Krasner’s drastic policy changes, the “brain drain” that occurred upon DA Krasner’s transition to office, DA Krasner’s “kumbaya” training initiatives, and the resulting ineffectiveness of his office.

DA Krasner’s dismissals of ADAs hired by previous administrations were said to be part of a “broad reorganization” of the office’s structure and a way to implement cultural change.¹²² Richard Sax, a retired homicide prosecutor, told the *Philadelphia Inquirer* that the dismissals appeared “personal and vindictive,” and would cause lasting damage to the office.¹²³ Carlos Vega, a former homicide prosecutor in Philadelphia, stated that “he felt bad for victims” because “there aren’t many experienced prosecutors left in that unit, so this will be the blind leading the blind.”¹²⁴

Several former ADAs, including both those who were dismissed during DA Krasner’s first week in office and those who were employed by him for various periods of time, expressed concern to the Select Committee that DA Krasner eliminated important institutional knowledge from the supervisory and deputy roles in the DAO and replaced them with people who did not have the necessary experience to prosecute criminal cases. Former ADA Lisa Harvey, who remained in her position for over a year after DA Krasner took office, shared with the Select Committee that DA Krasner’s decision to eliminate so many ADAs resulted in gutting from the trial units anyone who was a seasoned trial attorney. She speculated that DA Krasner did so because he distrusted prosecutors and felt that they were the cause of the social injustices he sought to remedy. She believes that this philosophy colored every decision he made while she served in his administration.

Ms. Harvey further stated that by eliminating institutional knowledge, DA Krasner created a “his people” versus everyone else mentality that caused horrible morale in the office. As a result, in addition to those who DA Krasner fired, many other experienced and knowledgeable ADAs voluntarily left the office.

Former ADA Thomas Bello re-joined the DAO under DA Krasner in approximately mid-2019, after having served as an ADA in the DAO between 1972 and 1985. He told the Select Committee that when he came back, it was clear that there had been no continuous management from the prior administration, which led to chaos.

The Select Committee also heard from former ADA Christopher Lynett. Mr. Lynett said that he was “hopeful” upon DA Krasner taking office, but he was ultimately “deeply disappointed.” He told the Select Committee that, in his opinion, DA Krasner’s mismanagement of the office was, at the least, reckless, and went so far as to say that he could even infer malice or intent on the part of

<https://www.inquirer.com/philly/news/crime/larry-krasner-philly-da-firing-prosecutors-20180105.html-2>.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Steve Volk, *Krasner Announces Big Shakeup in Homicide Unit of DA’s Office*, Philadelphia Inquirer, (Sept. 18, 2018), <https://www.phillymag.com/news/2018/09/18/krasner-homicide-reorganization/>.

DA Krasner based on his unwillingness to change course. Ultimately, Mr. Lynett concluded that DA Krasner’s philosophy appears to be based on distrust of the criminal justice system, and trust only in himself.

The Select Committee reviewed comments made by former ADA Thomas Mandracchia,¹²⁵ who joined DA Krasner’s administration immediately out of law school in 2018. Mr. Mandracchia shared in *Philadelphia Weekly* that the criminal justice system needs reform, but that DA Krasner’s re-election would “only worsen this association of reform with Krasner’s personal failures.”¹²⁶ He noted the majority of crime and homicide victims are Black and Latino individuals living in impoverished neighborhoods, evidence that DA Krasner’s alleged reform “is most certainly not progressive.”¹²⁷ He also said that DA Krasner’s “inability to responsibly manage the DA’s Office created a toxic environment” where “the morale of excellent attorneys vanish[ed],” and “[b]oth progressive and traditional prosecutors alike [were] fed up [] and miserable”¹²⁸ Now, he said, “people associate reform with disaster” but the disaster “stems from Larry Krasner.”¹²⁹ The mismanagement of the office matters, Mr. Mandracchia concluded, because “[w]hen prosecutors make mistakes, people can get hurt or killed” if DA Krasner and his office are “unable to perform a core function of his post: protect Philadelphians from danger.”¹³⁰

B. DA Krasner Withdrew from the PDAA and Offered Progressive Trainings

Multiple former ADAs employed by DA Krasner commented that his office did not hire attorneys with sufficient experience and did not properly train them. Former ADA Thomas Bello stated that DA Krasner wished to hire ADAs who embraced his progressive reform policies regardless of their experience. Former ADAs Richard Aponte-Boyd and Jill Roth recounted the same. According to Mr. Bello, DA Krasner’s approach to hiring decisions, among other things, led to an increasingly high turnover rate in the office.

The Select Committee interviewed Greg Rowe, Executive Director of the Pennsylvania District Attorneys Association (previously defined, “PDAA”), who formerly served as the Director of Legislation and Policy at the DAO under a prior administration. Mr. Rowe was one of the more than 31 ADAs whose employment was terminated by DA Krasner during his first week in office. The PDAA is Pennsylvania’s largest prosecutors’ association and is involved in advocacy and policy work on behalf of Pennsylvania district attorneys’ offices. The Pennsylvania District Attorneys Institute (previously defined, “PDAI”) is the PDAA’s 501(c)(3) training organization. It offers significant training opportunities for Pennsylvania ADAs on a wide variety of topics, including, but not limited to, prosecutorial ethics; legislation, case law, and safety updates; implicit bias; human trafficking; use of force; and wiretaps and electronic surveillance. The PDAI also

¹²⁵ Mr. Mandracchia declined a request from the Select Committee for an interview.

¹²⁶ Thomas Mandracchia, *A District Attorney’s Office in disrepair*, *Philadelphia Weekly*, (May 12, 2021), <https://philadelphiaweekly.com/voices-may-13-20/>.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

offers basic training for newly hired prosecutors, as well as trial advocacy trainings and special programs, like how to try a homicide.

DA Krasner withdrew the Philadelphia DAO's membership from the PDAA in November 2018, making Philadelphia the only county in Pennsylvania that is not a member of the PDAA. DA Krasner has publicly stated that he decided to withdraw from the PDAA because it supported regressive and punitive policies.¹³¹ At the public hearings held by the Select Committee in Philadelphia, Mr. Rowe testified to the wide variety of core trainings to which Philadelphia ADAs no longer have access given DA Krasner's decision to withdraw. He noted that the DAO had previously supplemented PDAI training with internal continuing education opportunities, but he was not aware of the content of those trainings in DA Krasner's administration.

On that point, the Select Committee gathered information from Charles F. Gallagher III, a former Philadelphia ADA. As a former ADA, Mr. Gallagher continues to receive emails about continuing legal education programs offered by the DAO, including two-day trainings in February, July and November of each year. Mr. Gallagher provided the Select Committee the training schedules for each two-day session from 2018 through 2021. In stark contrast to the traditional prosecutorial trainings offered by the PDAI, i.e. training focused primarily on doing the job of prosecuting crime, the trainings offered under DA Krasner's administration in February 2018, the month after DA Krasner took office, included, among other things:¹³²

- A New Vision for Criminal Justice in Philadelphia;
- Analytics and the Modern Prosecutor;
- Deportation: The Unforeseen Consequences of Prosecution in our Immigrant Communities;
- Where Rubber Meets the Road: Restorative Justice in the Community;
- Towards a New View of *Brady*;
- Criminalizing Pregnancy: Barriers to Health and Justice for Pregnant Substance-Abusing Women; and
- Philadelphia and Safe Injection: Harm Reduction as Public Policy.

Former ADA Jill Roth, who worked in DA Krasner's administration until January 2020, described workforce education under DA Krasner as "kumbaya" trainings. As an example, she recalled a requirement that new ADAs spend a night at a homeless shelter. Ms. Roth noted that regardless of any value gained through such training, it does not teach new ADAs how to prosecute crime, i.e., how to do their job. Mr. Mandracchia, a new hire in 2018, wrote that the "bizarre training"

¹³¹ See Chris Palmer, *Philly DA Larry Krasner withdraws office from statewide prosecutors group*, Philadelphia Inquirer, (Nov. 16, 2018),

<https://www.inquirer.com/philly/news/crime/philadelphia-da-district-attorney-larry-krasner-withdraws-pdaa-20181116.html>.

¹³² See Philadelphia DAO Curriculum, attached hereto as Attachment K.

ended and when his class “eventually entered the courtroom, my colleagues and I realized our training was insufficient at best and misleading at worst.”¹³³

Other training schedules provided by Mr. Gallagher notably included more traditional prosecutorial trainings than did the February 2018 schedule. However, many of the former ADAs that spoke with the Select Committee stated the DAO’s trainings were not focused on how to prosecute a case but, instead, on impact issues that furthered DA Krasner’s progressive philosophies.

C. DA Krasner Implemented Progressive Policies

Upon election, DA Krasner immediately implemented progressive policies to transform the DAO in accordance with his campaign promises. Interviews with former ADAs confirm publicly available information on both the actions taken and the corresponding results. In order to further his philosophies, Mr. Krasner disregarded the importance of relationships with the PPD, cut off training provided by the PDAA/I, and eliminated the valuable institutional knowledge held by supervisors and deputies in the DAO by firing or sidelining individuals who disagreed with his prosecutorial philosophy. In an interview with the Select Committee, Ms. Harvey observed that the DAO lost a voice in the courtroom because DA Krasner’s philosophies required ADAs to look at a case through the lens of a defendant, not a victim. One of the 31 ADAs let go by DA Krasner in his first week in office told the Select Committee that DA Krasner’s mismanagement led to an office that is essentially full of defense attorneys who just want to get defendants out of jail.

DA Krasner also revamped and created certain office policies which represented “an effort to end mass incarceration and bring balance back to sentencing.”¹³⁴ Notably, these policies instruct ADAs to decline charges for marijuana possession and sex worker crimes, and to reduce retail thefts of \$500 or less to summary offenses rather than misdemeanors.¹³⁵ Certain policies are discussed in greater length at Sections 2 through 5, below.

Several of DA Krasner’s former staff members referred to the transition from the prior administration to DA Krasner’s administration as disorganized with the haphazard implementation of policies. Former ADA Lynett stated that DA Krasner implemented policies without consulting the ADAs who would be responsible for the work that the policies impacted. Ms. Harvey felt that DA Krasner’s decision to include people without any practical knowledge of the DAO and the job of a prosecutor was purposeful.

The Select Committee has reviewed the policies adopted by DA Krasner. A summary of selected new policies follows. The policies adopted in February 2018, labeled “New Policies” and identified as those adopted within 45 days of DA Krasner taking office, state that the policies “are an effort to end mass incarceration and bring balance back to sentencing.”¹³⁶ DA Krasner later

¹³³ *Voices May 13-20*, Philadelphia Weekly, (May 12, 2021), <https://philadelphiaweekly.com/voices-may-13-20/>.

¹³⁴ See Excerpts from DAO Policies, attached hereto as Attachment L, at DAO 000174.

¹³⁵ *Id.*

¹³⁶ *Id.*

adopted additional, specific policies related to certain crimes or classes of people, some of which are described below. First, however, the Select Committee addresses one of DA Krasner’s policies which is currently being litigated as allegedly violating the due process rights of Philadelphians.

1. The Do-Not-Call List

Prior to DA Krasner’s election, former DA Williams compiled a confidential list of approximately 66 current or former PPD officers categorized as (a) officers who could not be called as witnesses unless approved by a high-ranking ADA, (b) officers whose misconduct would be disclosed to the defense if used as a witness, and (c) officers who could testify as a witness but their misconduct was noted.¹³⁷ Upon taking office, DA Krasner confirmed the existence of the list, released it publicly pursuant to a court order, and conducted an investigation into the list. DA Krasner requested certain information from the PPD regarding violations of its officers in order to assist prosecutors with identifying credibility issues.¹³⁸ DA Krasner also intended to develop a protocol to disclose the officers’ misconduct to defense lawyers.¹³⁹

In November 2018, the Fraternal Order of Police, Lodge No. 5 (“Lodge 5”) filed a lawsuit against the City of Philadelphia, Mayor Jim Kenney, Police Commissioner R. Richard Ross, and DA Krasner.¹⁴⁰ The second amended complaint, filed on or about April 5, 2019, alleges violations of the officers’ constitutional rights based on the improper and illegal disclosure of their confidential personnel records. On appeal, the Commonwealth Court found that the trial court properly dismissed Lodge 5’s efforts to “enjoin the City from providing information from appellant officers’ personnel files to DA Krasner, and to enjoin DA Krasner from creating and maintaining an internal Do Not Call List, or from disclosing potentially exculpatory or impeachment information to criminal defense counsel.”¹⁴¹ However, **the Commonwealth Court reversed the trial court’s dismissal of the procedural due process claims on behalf of exonerated officers who do not believe they should be on the misconduct list.**¹⁴²

As the issue of the constitutionality of the DAO’s policies and procedures regarding the disclosure of alleged police misconduct is presently pending before the judiciary, the Select Committee refrains from speculation as to the outcome of that case or the legality of the parties’ positions. The Select Committee notes the multiple studies recommending cooperation between the DAO, PPD, and other public safety stakeholders. Collaboration is indisputably key to fighting crime. In

¹³⁷ *The full list of Philadelphia’s 66 Problem cops*, Philadelphia Inquirer, <https://www.inquirer.com/crime/inq/full-list-philadelphias-66-problem-cops-20180316.html> (last visited September 1, 2022).

¹³⁸ Mark Fazlollah and Chris Palmer, *Philly DA Larry Krasner seeking to develop comprehensive list of tainted cops*, Philadelphia Inquirer, Philadelphia Inquirer, (Jun. 4, 2018), <https://www.inquirer.com/philly/news/crime/philly-da-larry-krasner-seeking-to-develop-comprehensive-list-of-tainted-cops-20180604.html>.

¹³⁹ *Id.*

¹⁴⁰ *See Fraternal Order of Police, Lodge No. 5 v. City of Phila.*, 267 A.3d 531 (Pa. Commw. Ct. 2021).

¹⁴¹ *Id.*

¹⁴² *Id.*

fact, Mr. Hogan opined that one troubling result of the lack of collaboration could be that the “combination of de-prosecution conduct hypothetically could create a feedback loop leading to de-policing, as members of the [PPD] become less aggressive in making discretionary arrests, which in turn might lead to more homicides.”¹⁴³ The readily apparent current state of discord between the DAO and PPD does not serve the Philadelphia community and cannot continue to exist, and progressive policies cannot continue to be prioritized over public safety.

2. The New Policies

The New Policies contain a list of crimes that the DAO will decline to charge, including:

- possession of marijuana (cannabis) regardless of weight,
- offenses relating to paraphernalia or buying from a person if the drug is marijuana,
- prostitution against sex workers, and
- cases involving the possession of Buprenorphine.¹⁴⁴

The New Policies further identify certain offenses for which the gradation may be reduced with the purpose of “reduc[ing] pre-trial incarceration rates as no bail is required and the shorter time required for hearings expedite Municipal Court and Common Pleas dockets.”¹⁴⁵ The New Policies require that ADAs “charge and dispose of Retail Theft cases as summary offenses unless the value of the item(s) stolen in a particular case exceeds \$500.00 or where the defendant has a very long history of theft and retail theft convictions.”¹⁴⁶ Further, charging retail theft cases as a misdemeanor or felony requires supervisory approval.¹⁴⁷

The New Policies encourage ADAs to use greater flexibility in approaching diversion and reentry, while considering accountability and justice, to avoid convictions.¹⁴⁸ The policy states as follows:¹⁴⁹

¹⁴³ Hogan, *supra* note 113, at 513.

¹⁴⁴ *See supra* note 134.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at DAO 000175.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

1. An otherwise law-abiding, responsible gun owner who is arrested because he does not have a permit to carry a firearm may apply for individualized consideration for diversion.
2. An otherwise law-abiding, first DUI (driving under the influence) defendant who has no driver's license (regardless of whether or not that defendant's immigration status interferes with obtaining a license under Pa. law) may apply for individualized consideration for diversion with a requirement of efforts to overcome license impediments where possible as an aspect of any diversionary program.
3. A defendant charged with marijuana (cannabis) delivery or PWID (Possession with the Intent to Deliver) may apply for diversion.

This is not a comprehensive list.

Regarding plea offers, for limited, less serious offenses, the New Policies instruct to make plea offers below the bottom end of the mitigated range, and if an ADA believes that to be too low, to seek supervisory approval for a higher sentence.¹⁵⁰ The New Policies further encourage ADAs to seek more house arrest, probation, and alternative sentences, where appropriate, if the sentencing guidelines have a range below 24 months.¹⁵¹ Finally, the New Policies encourage the ADA to state the benefits and cost of the recommended sentence on the record, because the “highest goal of sentencing must be to seek justice for society as a whole (the Commonwealth includes victims, witnesses, defendants, and those not directly involved in an individual case) while effectively preventing crimes in the future via methods that work.”¹⁵²

Former ADA Lynett testified that despite the policy appearing to provide a blanket rule, he was aware of at least some cases in which these charges were pursued during DA Krasner's administration.

3. The Bail Policy

DA Krasner also adopted a policy in February 2018 that his office “will ordinarily no longer ask for cash bail for ... misdemeanors and felonies” listed in the policy.¹⁵³ The policy provides the following as purported justification: “The cash bail system is rife with injustice and exacerbates socio-economic and racial inequalities, disproportionately penalizing the poor and people of color. The reforms laid out below represent a decisive step toward ending the use of cash bail and making the pretrial system more just.”¹⁵⁴ The Bail Policy provides for certain exceptions and specific considerations for certain types of charges, and explicitly provides that “[w]hile a presumption

¹⁵⁰ *Id.* at DAO 000176.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.* at DAO 000180.

¹⁵⁴ *Id.*

against cash bail applies in the above cases, representatives will continue to have discretion to ask for monetary bail where justices requires.”¹⁵⁵

4. The Policy on Immigration Outcomes

DA Krasner adopted a policy in November 2018 (the “Immigration Policy”) which concentrates on cases involving immigrants as victims, witnesses, and defendants, noting that “[c]reating barriers to participation in the criminal justice system due to the harsh deportation policies carried out by the federal government creates vulnerability in our communities where immigrants can be preyed upon with impunity by criminals and is completely unacceptable.”¹⁵⁶

The Immigration Policy provides: “Where disproportionate immigration consequences may result from a criminal conviction and/or sentence, the case will be reviewed by immigration counsel to see what, if any, changes could be made to neutralize or reduce those consequences.”¹⁵⁷ The Immigration Policy cites the United States Supreme Court case *Padilla v. Kentucky* for support that adverse immigration consequences, and especially deportation, are additional punishments that are “uniquely difficult to classify as either a direct or a collateral consequence.” 559 U.S. 356, 366 (2010). Relying on the United States Supreme Court’s opinion that “informed consideration of possible [immigration consequences] can only benefit both the State and noncitizen defendants during the [trial process],” the Immigration Policy sets forth a procedure for the DAO to consult immigration counsel, if the immigration status of a defendant is known.¹⁵⁸ Generally, where an immigration consequence is detected pre-trial or with respect to a sentencing recommendation, counsel will advise if an offer can be made to avoid the consequence.¹⁵⁹ The Immigration Policy then sets forth specific procedures regarding when presumptions are acceptable and when they are not, including for a list of the most serious offenses.¹⁶⁰

Some ADAs who worked under DA Krasner provided examples of cases where an illegal immigrant’s charge was reduced in order to avoid an immigration consequence that would likely have resulted in deportation. For example, according to former ADA Aponte-Boyd, a child pornography charge was pled to a summary offense solely because the defendant was an illegal immigrant. Mr. Aponte-Boyd could not recall the name of the case or the ADA who handled it. He raised the case as one of the reasons he left the DAO. Former ADA Bello similarly recalled a case where a defendant pled to possession of an instrument of a crime, down from a gun charge, because the gun charge would have had an adverse immigration impact. Mr. Bello recalled that he expressed his opinion that a decision on that basis was problematic, but that he did not successfully convince DA Krasner to maintain the original charge. He recalled a second case where a charge was reduced from arson to criminal mischief for the same reason, but could not

¹⁵⁵ *Id.* at DAO 000181.

¹⁵⁶ *Id.* at DAO 000188.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at DAO 000189.

¹⁵⁹ *Id.* at DAO 000189 – 000190.

¹⁶⁰ *Id.* at DAO 000190 – 000191.

provide specific information regarding the case or speculate on how often the DAO made decisions on this basis.

5. Other Policies

Other progressive policies adopted by the DAO can be viewed on its website at: <https://phillyda.org/resources/#dao-policies>. Of note are the DAO's policies on:

- **Buprenorphine/Suboxone Possession Arrests and/or Pending Cases**, which directs that “mere possession of medications containing buprenorphine shall be declined for charging” and that any such pending charges “shall be withdrawn no later than the next court listing.”¹⁶¹
- **Cannabis DUI**, which directs, *inter alia*, that “[a]n ADA may not proceed on a case where a defendant’s blood only contains inactive metabolite (11-Nor-9-Carboxy-Delta-9-THC) or 4 or fewer ng/mls of psychoactive THC” and that “if the defense presents evidence that calls impairment into question, an ADA may consider dropping the charges against the defendant,” considering certain factors.¹⁶²
- **Expungement and Refile**, which directs, *inter alia*, that “[t]he DAO will only oppose motions for redactions or expungements in limited circumstances” and sets forth various scenarios in which the DAO will agree to, seek or not oppose the expungement of a defendant’s criminal history.¹⁶³
- **Accelerated Misdemeanor Program (AMP) Expansion**, which directs that “diversion into AMP should be extended to more people by lowering eligibility barriers” and by permitting diversion even where the defendant, *inter alia*, owes less \$500 in restitution, previously failed to complete AMP, “has several violent arrests within the last 10 years that did not result in a conviction,” was previously found “not guilty” on a homicide, or was a “Gunstat Offender.”¹⁶⁴ The Select Committee understands that Gunstat was a crime-fighting measure implemented in DA Williams’

¹⁶¹ *Philadelphia DAO Policy on Buprenorphine/Suboxone Possession Arrests and/or Pending Cases*, Philadelphia District Attorney’s Office, (Jan. 28, 2020), <https://phillyda.org/wp-content/uploads/2021/11/DAO-Buprenorphine-Possession-Arrests-Policy.pdf>.

¹⁶² *Philadelphia DAO Policy on Cannabis DUI*, Philadelphia District Attorney’s Office, (Dec. 3, 2018), <https://phillyda.org/wp-content/uploads/2021/11/DAO-Cannabis-DUI-Policy.pdf>.

¹⁶³ *Philadelphia DAO Policy on Expungement and Refile*, Philadelphia District Attorney’s Office. (May 2, 2018), <https://phillyda.org/wp-content/uploads/2021/11/DAO-Expungement-Policy.pdf>.

¹⁶⁴ *Philadelphia DAO Policy on Accelerated Misdemeanor Program (AMP) Expansion*, Philadelphia District Attorney’s Office, (Feb. 4, 2019), <https://phillyda.org/wp-content/uploads/2021/11/DAO-AMP-Policy.pdf> (explaining: “Society’s expectation of the criminal justice system is moving away from incarceration towards restorative justice models, thereby demanding an end to our reliance on strictly punitive measures. Additionally, society has recognized how the criminal justice system has disproportionately impacted communities of color.”).

administration as a collaborative effort to reduce gun violence through the enhancing monitoring and arrest of prolific, known violent offenders in areas of high incidents of violent crime. Gunstat is not used in the Krasner administration.¹⁶⁵

- **Community Supervision Reform** (a/k/a the “New Philadelphia DAO Policies Announced March 21, 2019 to End Mass Supervision”), which directed, *inter alia*, that plea offers and sentence recommendations shall be (i) for felonies, “**aimed at an office-wide average period of total supervision among cases of around 18 months or less of total supervision, with a ceiling of 3 years of total supervision or less on each case**”; (ii) for misdemeanors, aimed at an office-wide average of “**6 months or less of total supervision, with a ceiling of 1 year**”; (iii) for all matters, for “**concurrent sentences**”; (iv) for cases involving incarceration, “for **a period of parole that is no longer than the period of incarceration.**”¹⁶⁶
- **Woman Centered Policies**, which direct ADAs to consider, *inter alia*, single parenthood, history of abuse, and pregnancy as mitigating factors in sentencing of women or a person “of any gender who is similarly situated.”¹⁶⁷

Nearly all of DA Krasner’s policies expressly “create a presumption” for ADAs to follow and purport to allow deviation from the policies upon approval by DA Krasner or a first assistant.

V. PROSECUTORIAL DISCRETION IN THE COMMONWEALTH

The Select Committee also sought the expert opinion of Professor Bruce Antkowiak, who testified at the September 29, 2022 public hearing regarding the scope of prosecutorial discretion in the Commonwealth. Professor Antkowiak’s report is attached hereto as Attachment M. Regarding the discretion of a prosecutor, he noted: “Perhaps in a respectful acknowledgement of the foundational principle of separation of powers, the law has always been given significant deference to the ability of prosecutors to decide how to deploy the resources of their office in the decision on what sorts of crime should be prosecuted and to what extent.”¹⁶⁸ After analyzing Pennsylvania law regarding the scope of that discretion, Professor Antkowiak concluded: “This discretion affords prosecutors tremendous power.”¹⁶⁹

¹⁶⁵ *Id.*

¹⁶⁶ *New Philadelphia D.A.O Policies Announced March 21, 2019 to End Mass Supervision*, Philadelphia District Attorney’s Office, (Mar. 21, 2019), (emphasis original), <https://phillyda.org/wp-content/uploads/2021/11/PHILA-DAO-MEMO%EF%80%A0-POLICIES-TO-END-MASS-SUPERVISION.pdf>.

¹⁶⁷ *Philadelphia DAO Women Centered Policies*, Philadelphia District Attorney’s Office, (Oct. 1, 2020), <https://phillyda.org/wp-content/uploads/2021/11/DAO-Women-Centered-Policies.pdf>.

¹⁶⁸ See Bruce Antkowiak, *Report to Select Committee on Restoring Law & Order, Pennsylvania House of Representatives, Pursuant to H R 216* (“Antkowiak Expert Report”), (2022), at 38, attached hereto as Attachment M.

¹⁶⁹ *Id.* at 39.

Of particular significance to this Select Committee’s investigation, a recent Pennsylvania Supreme Court case held that a charging decision is “generally beyond the reach of judicial interference” unless the discretion is patently abused.¹⁷⁰ Professor Antkowiak points out that charging decisions are subject to review for arbitrary abuse.¹⁷¹

A prosecutor can choose to prosecute, or not. A prosecutor can select the charges to pursue, and omit from a complaint or bill of information those charges that he or she does not believe are warranted or viable on the facts of the case. A prosecutor can also condition his or her decision not to prosecute a defendant.

Commonwealth v. Cosby, 252 A.3d 1092, 1135 (Pa. 2021). Professor Antkowiak notes certain circumstances in which a prosecutor may be displaced from prosecuting in Pennsylvania.¹⁷² The Select Committee notes that one method is for the Attorney General to exercise power provided by the Commonwealth’s Attorneys Act, 71 P.S. Sections 732-205, which allows it to petition a court to supersede a district attorney in the prosecution or the initiation of a prosecution.¹⁷³ To do so, the Attorney General must show, by a preponderance of the evidence that the district attorney “has failed or refused to prosecute in a matter that constitutes an abuse of discretion.”¹⁷⁴ In the alternative, the Court of Common Pleas may also invoke this statute by requesting that the Attorney General seek to displace the district attorney.¹⁷⁵

Professor Antkowiak notes that the discretion in Pennsylvania can result in “a checkerboard fashion in the Commonwealth where cases of a similar nature will receive very disparate treatment depending on whether they occur in one county or a few miles away in another.”¹⁷⁶ Professor Antkowiak concludes:¹⁷⁷

The checks and balances system the framers of our government chose was believed to be effective to limit arbitrary abuse by any individual branch. In such a scheme, the primary check on the discretionary authority of a District Attorney lies with the same authority upon which the system relies to be the ultimate corrective authority for abuses in the other branches. That ultimate authority is the people who, with respect to local prosecutors, exercise that authority most directly and effectively by the electoral process every

¹⁷⁰ *Id.* at 41 (citing *Commonwealth v. Cosby*, 252 A.3d 1092, 1134 (Pa. 2021)).

¹⁷¹ *Id.* at 42; *Cosby*, 253 A.3d at 1135 (“A prosecutor can choose to prosecute or not. A prosecutor can select the charges to pursue and omit from a complaint or bill of information those charges that he or she does not believe are warranted or viable on the facts of the case.”).

¹⁷² *Id.* at 49.

¹⁷³ *Id.* at 50 (citing 71 P.S. §§ 732-205).

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at 51.

¹⁷⁷ *Id.*

four years when a District Attorney stands before the public to account for his or her discretionary judgments.

Professor Antkowiak went on to say that in those situations where a prosecutor's discretion is abused to the level where the legislature believes that it constitutes misbehavior in office, the only remedy currently available under Pennsylvania law is provided for in Article VI of the Pennsylvania Constitution.

The Pennsylvania Constitution says:

§ 6. Officers liable to impeachment.

The Governor and all other civil officers shall be liable to impeachment for any misbehavior in office, but judgment in such cases shall not extend further than to removal from office and disqualification to hold any office of trust or profit under this Commonwealth. The person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

§ 7. Removal of civil officers.

All civil officers shall hold their offices on the condition that they behave themselves well while in office, and shall be removed on conviction of misbehavior in office or of any infamous crime. Appointed civil officers, other than judges of the courts of record, may be removed at the pleasure of the power by which they shall have been appointed. All civil officers elected by the people, except the Governor, the Lieutenant Governor, members of the General Assembly and judges of the courts of record, shall be removed by the Governor for reasonable cause, after due notice and full hearing, on the address of two-thirds of the Senate.

The Select Committee appreciates Professor Antkowiak's diligent efforts to timely provide his report for purposes of presentation to the public.

VI. THE DAO HAS FACED UNPRECEDENTED AND EXTRAORDINARY CRITICISM FROM THE JUDICIARY – BOTH FEDERAL AND STATE

In recent months, the DAO has faced harsh criticism from the judiciary, including in decisions by (i) Justice Kevin Dougherty of the Supreme Court of Pennsylvania in the *Pownall* case, who wrote a "special concurrence" regarding the DAO's "potential abuse" of the Pennsylvania investigating grand jury process in indicting former Philadelphia police officer Ryan Pownall in the shooting death of David Jones; (ii) Judge Barbara McDermott of the Philadelphia Court of Common Pleas, who dismissed the charges against former officer Pownall in accordance with Justice Dougherty's findings; and (iii) Judge Mitchell S. Goldberg of the United States District Court for the Eastern District of Pennsylvania, who sanctioned the DAO for misrepresenting its communications with

the victim in the *Wharton* case with respect to the DAO's proposed concession to the convicted murder's death sentence habeas petition.

A. The Pownall case, the DAO's potential abuse of the investigating grand jury, and bypass of Mr. Pownall's right to a preliminary hearing

On June 8, 2017, former on-duty Philadelphia police officer Ryan Pownall shot and killed David Jones. Thereafter, the DAO submitted the matter to the Twenty-Ninth Philadelphia County Investigating Grand Jury, which issued a presentment recommending that Mr. Pownall be charged with criminal homicide, possession of an instrument of crime, and recklessly endangering another person.¹⁷⁸ The Pennsylvania Supreme Court heard an appeal in the *Pownall* case after the DAO filed a motion seeking to prevent the trial court from using a Pennsylvania Standard Jury Instruction based on Section 508 of the Crimes Code regarding permissible use of force by a law enforcement officer. In considering that appeal, Justice Dougherty issued a "special concurrence," recognized as an "unusual" procedure, addressing certain conduct by the DAO.¹⁷⁹

Justice Dougherty's special concurrence called out: (a) the prosecutor's failure to give the investigating grand jury all relevant legal definitions related to the homicide charges prior to its deliberation and return of the presentment; (b) the DAO's use of a procedure to bypass Mr. Pownall's preliminary hearing; and (c) the DAO's use of a motion *in limine* to preclude a jury instruction on the Section 508 defense, specifically addressing the timing of that motion.¹⁸⁰ Justice Dougherty concluded that he could not "say the DAO has treated Pownall fairly and equally."¹⁸¹

- **Regarding the grand jury process**, Justice Dougherty held that the DAO's actions "implicate[] a potential abuse" and stated that "the presentment in this case is perhaps best characterized as a 'foul blow.'"¹⁸² He referred to the presentment as a "gratuitous narrative."¹⁸³
- **Regarding the preliminary hearing bypass**, Justice Dougherty recognized that any grand jury abuse could have been remedied by "Statutory safeguards embedded in the process," such as a preliminary hearing, but: "What is troubling is the DAO's effort to ensure that would not occur," i.e., their filing of a motion to bypass the preliminary hearing.¹⁸⁴ Justice Dougherty found it "inexplicable" that, in presenting the bypass motion to the Court of Common Pleas, the DAO did not highlight the Investigating Grand Jury Act Section 4551(e), which directs that a defendant "shall" be entitled to a preliminary hearing.¹⁸⁵ He

¹⁷⁸ See Attachment B, *Commonwealth v. Pownall*, 278 A3d 885 (Pa. 2022).

¹⁷⁹ *Id.* at 908.

¹⁸⁰ *Id.* at 909.

¹⁸¹ *Id.*

¹⁸² *Id.* at 911.

¹⁸³ *Id.* at 912.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 913.

emphasized that the DAO “appear[ed] to have known [about that requirement] at the time it filed its motion.”¹⁸⁶

- **Regarding the DAO’s motion in limine and interlocutory appeal**, Justice Dougherty concluded that the DAO’s motion “presented only half the relevant picture.”¹⁸⁷ He said that “this type of advocacy would be worrisome coming from any litigant,” but coming from a prosecutor, “is even more concerning, particularly in light of the motion’s timing.”¹⁸⁸ He cited directly to Pennsylvania Rule of Professional Conduct 3.3 regarding candor to the tribunal.¹⁸⁹ Further referencing ethical concerns, Justice Dougherty found that the timing of the motion *in limine*, “[w]hen combined with the other tactics highlighted throughout this concurrence,” could lead to the conclusion that the decision to take “an unauthorized interlocutory appeal was intended to deprive [Mr. Pownall] of a fair and speedy trial.”¹⁹⁰

In conclusion, Justice Dougherty stated that “[c]onsider[ing] the total sum of what occurred below[,] ... [t]he DAO secured from the grand jury, which operates under the cover of secrecy, **a slanted presentment written by the DAO’s own attorneys, based on its preferred facts.**”¹⁹¹ He highlighted the important duty of a prosecutor “to ‘seek justice within the bounds of the law, not merely to convict.’”¹⁹² Justice Dougherty further referred to Pennsylvania Rule of Professional Conduct 3.8, referencing a prosecutor’s duty to act as a “minister of justice and not simply that of an advocate,” requiring a prosecutor to “shoulder[] a unique responsibility that ‘carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence.’”¹⁹³ Justice Dougherty concluded as follows, in line with the concerns shared by former ADAs as discussed in Section IV of this Report:¹⁹⁴

Little that has happened in this case up to this point reflects procedural justice. On the contrary, the DAO’s prosecution of Pownall appears to be “driven by a win-at-all-cost office culture” that treats police officers differently than other criminal defendants. ... This is the antithesis of what the law expects of a prosecutor.

After the Supreme Court’s opinion, Mr. Pownall’s counsel filed a motion to dismiss the case in the trial court on the basis that the DAO had failed to properly instruct the grand jury prior to its

¹⁸⁶ *Id.* at 914.

¹⁸⁷ *Id.* at 916-17.

¹⁸⁸ *Id.* at 917.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.* (emphasis added).

¹⁹² *Id.* at 918 (citations omitted).

¹⁹³ *Id.* (citing Pa.R.P.C. 3.8, comments thereto).

¹⁹⁴ *Id.* (citations omitted) (emphasis added).

vote to approve the presentment.¹⁹⁵ On October 11, 2022, the Philadelphia Court of Common Pleas conducted a hearing to consider the propriety of the grand jury process.¹⁹⁶ Consistent with Justice Dougherty’s opinion, Judge McDermott said that there were “so many things wrong” with the DAO’s instructions to the investigating grand jury that it warranted dismissing all charges against Mr. Pownall.¹⁹⁷ After hearing testimony from the ADAs who handled the grand jury and preparation of the presentment, Judge McDermott concluded that the DAO failed to provide the legal instructions to the grand jurors on the definitions for homicide and information regarding the use-of-force defense.¹⁹⁸ Judge McDermott went so far as to tell the DAO that if defense counsel had made the decisions that the DAO made, she would “declare them incompetent.”¹⁹⁹ The DAO has the option to appeal Judge McDermott’s decision or to re-file charges against Mr. Pownall and to proceed with a preliminary hearing in the ordinary course.

Of significance, the Select Committee did not investigate and does not debate the circumstances of the alleged crime in the *Pownall* matter, or the guilt or innocence of Mr. Pownall. In addition, the Select Committee’s and Professor Antkowiak’s consideration of the actual investigative grand jury proceedings in the *Pownall* case was limited to only publicly available information given grand jury secrecy laws and the Select Committee’s exception from the materials requested from the DAO of any documents subject to any applicable privilege or protection.

B. The *Wharton* case and the DAO’s misrepresentations regarding communications with the victim

In December 2001, Robert Wharton, who was convicted of murdering the parents of survivor Lisa Hart-Newman, filed a death penalty habeas petition in federal district court.²⁰⁰ Ms. Hart-Newman, who was just seven months old and present at the time of the murder, was a victim herself—Mr. Wharton left her to freeze to death with her deceased parents, turning off the heat when leaving the scene.

In 2019, after years of opposition to the petition by the DAO, DA Krasner’s administration filed a “Notice of Concession of Penalty Phase Relief” (“Concession”), in which the DAO stated that it would not seek a new death sentence, and, based on that sentencing relief, the litigation and appeals could end.²⁰¹ The DAO’s Concession noted only that the decision to concede was made “[f]ollowing review of this case by the Capital Case Review Committee of the Philadelphia [DAO], communication with the victims’ family, and notice to [Wharton’s] counsel.”²⁰² Judge

¹⁹⁵ See Chris Palmer, *A Philly judge threw out all charges in the murder case against former police officer Ryan Pownall*, Philadelphia Inquirer, (Oct. 11, 2022), <https://www.inquirer.com/news/ryan-pownall-philadelphia-police-murder-case-dismissed-20221011.html>.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Wharton v. Vaughn*, No. 01-6049, 2020 WL 733107 (E.D. Pa. Feb. 12, 2020).

²⁰¹ *Id.* at *2.

²⁰² *Id.*

Goldberg determined that he must independently analyze the merits of the claim, despite the DAO's Concession, and receive additional evidentiary support.²⁰³ To that end, Judge Goldberg invited the OAG to file an amicus brief in the case.

The OAG brought forth additional facts that the DAO had not disclosed, including evidence of prison misconducts, attempted escapes, and Department of Corrections concerns regarding "assaultiveness" and "escape" by Mr. Wharton.²⁰⁴ The OAG also submitted an expert report conflicting that of Mr. Wharton's expert. The OAG concluded that "given the facts of this investigation and aggravating sentencing factors present in this case, Wharton could not establish a reasonable probability that the outcome of his penalty phase death sentence would have been different if the jury had heard evidence of his alleged 'positive' prison adjustment."²⁰⁵

The OAG also investigated the DAO's representation to the court that its Concession was submitted "following ... communication with the victims' family." The OAG determined that members of the family—including victim Ms. Hart-Newman—were not contacted and that they opposed the DAO's Concession.²⁰⁶ The DAO submitted an affidavit from a victim services coordinator detailing contact with only the male decedent's brother, providing him notice that the case was under review and asking him to invite any interested family members to contact her.²⁰⁷

In the course of the Select Committee's investigation, Counsel to the Chairman spoke with Ms. Hart-Newman. She indicated that she was only made aware of the ongoing litigation when she was contacted by the *Philadelphia Inquirer* and was later contacted by the OAG. Ms. Hart-Newman wrote a letter to the court in which she stated that she was "extremely disappointed to learn of the District Attorney's stance and very troubled that he implied that the family approved of his viewpoint."²⁰⁸ Ms. Hart-Newman said:²⁰⁹

Every day I live with the effects of that horrific night. Who is he to demand relief from his circumstances when I, the victim, can get no relief from mine? Each milestone of my life, every occasion that is to be celebrated, is colored with the heartbreak of my parents not being here to share in it with me. And even the hard times are made harder by the reality that my parents are not here to render support. As a parent myself now, I can only imagine what their final thoughts must have been when they realized that they were going to die. I know they must have been of me as mine would be of my daughter. The older I get, the greater my understanding of their suffering grows. My grief intensifies instead of lessening.

²⁰³ *Id.*

²⁰⁴ *Id.* at *3.

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ *Id.* at *8.

²⁰⁸ *Wharton v. Vaughn*, No. 01-cv-6049, ECF Doc. No. 171-5 (E.D. Pa. Jul. 22, 2019).

²⁰⁹ *Id.*

She described the DAO's position as "an affront to justice and has shown a total disregard for the life of my parents, my own life, and the impact that this would have on our family."²¹⁰

Based on the information presented by the OAG, Judge Goldberg held an evidentiary hearing. On September 12, 2022, Judge Goldberg issued a memorandum opinion in the case admonishing the DAO's conduct on multiple fronts.²¹¹

- ***Regarding the representations in the Concession***, Judge Goldberg held that the DAO failed to advise the court of significant anti-mitigation evidence, including that Mr. Wharton had made an escape attempt at a court appearance.²¹² Judge Goldberg concluded that the DAO and two of its supervisors violated Federal Rule of Civil Procedure 11(b)(3) "based upon that **Office's representations to this Court that lacked evidentiary support** and were not in any way formed after 'an inquiry reasonable under the circumstances.'"²¹³ He held that the DAO's representation that they had "carefully reviewed the facts" was unreasonable and lacked merit because it misrepresented that the DAO had "found no facts that would lead any reasonable judge to reject the claim."²¹⁴ Judge Goldberg concluded that if it had not been for the OAG's assistance, the "Court may have ordered habeas relief that, under the law, it had no power to grant—a risk that heightened the District Attorney's Office's duty to conduct a reasonable inquiry before requesting relief."²¹⁵ Notably, Judge Goldberg highlighted what he believed to be the mindset of the DAO— that "[a]pparently in **its zeal to overturn a jury's death sentence**, the District Attorney's Office did not bother to take this factor into account."²¹⁶
- ***Regarding the DAO's representations of communication with the victims' family***, Judge Goldberg said they were "misleading," "false," and "yet another representation to the Court made after an inquiry that was not reasonable under the circumstances."²¹⁷

²¹⁰ *Id.*

²¹¹ *Wharton v. Vaughn*, No. 01-cv-6049, ECF Doc. No. 314 (E.D. Pa. Sept. 12, 2022), attached hereto as Attachment N.

²¹² *Id.* at 3. The decision to file the Concession came from the Capital Case Review Committee, whose members consisted of the Law Division Supervisor and Assistant Supervisor. Both of these individuals testified that they did not know or attempt to know whether Mr. Wharton had an escape attempt in his background and were unable to explain inconsistent testimony from the prior year. *Id.* at 6.

²¹³ *Id.* at 3 (emphasis added).

²¹⁴ *Id.* at 11-12.

²¹⁵ *Id.* at 16.

²¹⁶ *Id.* at 17 (emphasis added).

²¹⁷ *Id.* at 20. The Federal Litigation Supervisor further stated that he did not mean to imply that to the court that all family members had been consulted prior to the filing the DAO's Concession and acknowledged that the statement was "amenable to the interpretation that the victims' family agreed with the concession of penalty phase relief." *Id.* at 8. The DAO further acknowledged the "misstep" of not notifying Ms. Hart-Newman, the surviving victim, and "recognize[d their] mistake." *Id.*

In finding that the Law Division Supervisor, Assistant Supervisor, and DAO **violated Rule 11(b)(1), and concluding that the violation was “sufficiently ‘egregious’ and ‘exceptional’ under the circumstances to warrant sanctions,”** Judge Goldberg decided not to sanction the individual attorneys or to issue monetary sanctions to the DAO. However, he required that the DAO send apology letters to the four victims for their conduct and issued directives to the DAO for any future practice in front of him.²¹⁸

Judge Goldberg concluded that Pennsylvania does not give the DAO discretion to set aside a death sentence once imposed²¹⁹ and that it appears the DAO took the opportunity to use a habeas petition regarding the ineffective assistance of counsel to serve as the vehicle to achieve that result, whether appropriate or not. However, because the DAO did not conduct an investigation appropriate to meet the duty imposed on it, the DAO violated the referenced laws and was unable to achieve its purpose.

Judge Goldberg’s scathing opinion determined that there was evidence of misconduct by the DAO and certain of its division supervisors. Though Judge Goldberg stopped short of reaching a conclusion on the motive of the DAO, based on the interviews of former ADAs who worked with DA Krasner, the most reasonable conclusion is that this is an example of DA Krasner’s defense-focused philosophy in practice and his publicly-shared view that the death penalty violates the Pennsylvania Constitution.

In her interview, Ms. Hart-Newman told Counsel that the DAO had provided its apology letter to her that week. Indeed, on October 11, 2022, DA Krasner issued a letter to Ms. Hart-Newman “apologiz[ing] for a failure in my office in not fully communicating with you and some members of your family regarding the Wharton case.”²²⁰ DA Krasner said in the letter: “Please allow me to summarize my understanding of what brings us to this point. ...” Most of the letter then summarizes the procedural history. The letter concludes:

During court proceedings involving the Wharton case, the Court determined that the DAO’s statement that it engaged in ‘communications with the victims’ family’ was inappropriate and directed me to apologize for that as well. Pursuant to the enclosed Order of the Court in *Wharton v. Vaughn*, C.A. No. 01-6049, I write to apologize for the failure of my office to fully communicate with you and the other family members in this case and, per the Court’s order, for the DAO’s representation that it engaged in ‘communication with the victims’ family.’”

DA Krasner enclosed the Court’s order and informed Ms. Hart-Newman that his office has appealed it “because we believe that the lawyers in my office who handled this case acted within their professional and ethical duties and did not violate Rule 11 of the Federal Rules of Civil

²¹⁸ *Id.* at 26-27.

²¹⁹ *Id.* at 16.

²²⁰ See *Wharton v. Vaughn*, No. 01-cv-6049, ECF Doc. No. 319 (E.D. Pa. Oct. 11, 2022)

Procedure (or any other obligation).” He said that, regardless of the outcome of the appeal, he apologized for “the *lack of full communication* with” Ms. Hart-Newman.

Ms. Hart-Newman made clear in her interview with Counsel to the Chairman that the DAO had no communication whatsoever with her—the only living victim of Mr. Wharton’s heinous crimes.

Former ADA Bello, who was the trial counsel in the *Wharton* case in 1985, was also interviewed in the course of the Select Committee’s investigation. Significantly, Mr. Bello shared that despite the fact that he was again employed by the DAO in 2019, during the pendency of the federal habeas suit in front of Judge Goldberg, no one from the DAO reached out to him regarding the victims’ family members’ positions on the death penalty at the time of the original trial. If they had, he would have shared that the parents of the male decedent supported the death penalty sentence. Mr. Bello’s interpretation of the ADAs and DA Krasner’s deliberate decision not to discuss the case with him is that they did not want to know his opinion or the knowledge he had regarding the victims’ family’s position on the death penalty sentence.

* * *

These harsh criticisms by the judiciary—an independent branch of government—of the DAO’s failures to fairly and appropriately carrying out its executive function speak volumes. The Select Committee is aware that on October 11, 2022, Judge Eduardo C. Robreno of the United States District Court for the Eastern District of Pennsylvania ordered the participation of the OAG as amicus curiae to conduct a review of the merits and propriety of the DAO’s proposed concession to a habeas petition filed by a man convicted of first-degree, among other crimes, in 1988, which, if granted, would give him time served on the lesser charge of third-degree murder as opposed to his original life sentence. The Select Committee recommends tracking this case for future developments, especially given the result of the OAG’s similar participation in the *Wharton* case.

CONCLUSION

The Select Committee concludes this Second Interim Report by reiterating its disappointment in DA Krasner and the DAO's repeated refusal to cooperate with the Select Committee's investigation empowered by HR 216. Rather than cooperate with the Select Committee's request for documents, DA Krasner and the DAO filed a lawsuit not only seeking to quash the Select Committee's efforts to obtain relevant information, but to shut down its entire investigation. DA Krasner and the DAO's baseless denial of the Select Committee's authority since August 22, 2022, has foreclosed any collaboration with the DA Krasner and the DAO to address the undeniable crisis facing its City.

The Select Committee has no reservations in emphatically stating, even at this interim stage, 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. The Select Committee is hopeful that its work has underscored this critical need and that such cross-office cooperation can and does result from its work.