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HOUSE OF REPRESENTATIVES

JUDICIARY
COMMITTEE HEARING

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WEDNESDAY, JULY 23, 2014
10:05 A.M.

PRESENTATION ON
PENNSYLVANIA FINGERPRINT REPORTING

BEFORE:

HONORABLE RONALD MARSICO, MAJORITY CHAIRMAN
HONORABLE BRYAN CUTLER
HONORABLE BRIAN ELLIS
HONORABLE GLEN GRELL
HONORABLE MARK KELLER
HONORABLE BERNIE O'NEILL
HONORABLE MIKE REGAN
HONORABLE THOMAS CALTAGIRONE, DEMOCRATIC CHAIRMAN
HONORABLE BRYAN BARBIN
HONORABLE DOM COSTA

* * * * *

*Pennsylvania House of Representatives
Commonwealth of Pennsylvania*

COMMITTEE STAFF PRESENT:

THOMAS DYMEK
MAJORITY COUNSEL AND EXECUTIVE DIRECTOR

MICHAEL KANE
MAJORITY COUNSEL

JEN DURALJA
MAJORITY COMMITTEE SECRETARY

MICHELLE MOORE
MAJORITY ADMINISTRATIVE ASSISTANT

MIKE FINK
MAJORITY REPUBLICAN RESEARCH

DAVID VITALE
DEMOCRATIC COUNSEL AND EXECUTIVE DIRECTOR

DAVID MCGLAUGHLIN
DEMOCRATIC RESEARCH ANALYST

VINCENT BELLMAN
DEMOCRATIC RESEARCH ANALYST

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SUBMITTED WRITTEN TESTIMONY

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(See submitted written testimony and handouts online.)

1 P R O C E E D I N G S

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3 MAJORITY CHAIRMAN MARSICO: Well, good morning,
4 everyone. Welcome to the Judiciary Committee meeting.
5 We're pleased to be able to convene this meeting this
6 morning to receive testimony concerning the process of
7 criminal fingerprinting in Pennsylvania.

8 Before we get started, I'd like to announce that
9 you might want to turn off your cell phones, and we're also
10 being recorded, and that you do that, please.

11 I'm going to ask the Members that are present to
12 introduce themselves starting on my far left.

13 REPRESENTATIVE ELLIS: Good morning. State
14 Representative Brian Ellis, 11th District, Butler County.

15 MAJORITY CHAIRMAN MARSICO: And staff.

16 MR. DYMEK: Tom Dymek, Executive Director of the
17 Committee.

18 MAJORITY CHAIRMAN MARSICO: Ron Marsico, Chair of
19 the Committee.

20 MINORITY CHAIRMAN CALTAGIRONE: Tom Caltagirone,
21 Reading, Berks County.

22 MR. VITALE: Dave Vitale, Executive Director.

23 REPRESENTATIVE COSTA: Dom Costa, 21st District,
24 Allegheny County.

25 REPRESENTATIVE CUTLER: Good morning. Bryan

1 Cutler, 100th District, southern Lancaster County.

2 REPRESENTATIVE O'NEILL: Yeah, good morning.

3 Bernie O'Neill, the 29th District, Bucks County.

4 REPRESENTATIVE GRELL: Good morning.

5 Representative Glen Grell, 87th District, which is part of
6 Cumberland County.

7 MAJORITY CHAIRMAN MARSICO: Okay. Thank you.

8 Well, most of the public may assume that fingerprints are
9 obtained every time any person is arrested. The actual
10 practice of fingerprinting can vary dramatically from
11 jurisdiction to jurisdiction. And whether fingerprints are
12 taken can depend on a number of different factors.

13 Today's hearing is to educate the Committee and
14 the public about when and how fingerprints are taken of
15 arrestees, why it is important that high quality
16 fingerprints are taken, and what can possibly be done to
17 ensure the highest percentage possible of arrestees have
18 their fingerprints taken.

19 This is an important public safety issue because
20 the fingerprint has become the key to unlocking a person's
21 criminal history. A person's criminal history is used by
22 law enforcement and others for many important reasons. For
23 example, without a reliable criminal history, judges and
24 prosecutors may not know if they are dealing with a repeat
25 offender in a case. In addition to the obvious importance

1 of criminal histories in criminal investigations, a
2 person's criminal history may also be consulted when a
3 person is applying for a job, working with children or the
4 elderly, or other vulnerable citizens.

5 And to help educate the Committee about this
6 issue, we are joined by a group of experts, including
7 representatives of the State and local police, including
8 also the court system, the Pennsylvania Commission on
9 Sentencing, and the Pennsylvania Commission on Crime and
10 Delinquency. Thank you to all of you for joining us and
11 providing us with your testimony. We appreciate that.

12 I'm going to turn it over to Representative
13 Caltagirone for comments.

14 MINORITY CHAIRMAN CALTAGIRONE: Thank you,
15 Mr. Chairman.

16 I would just like to echo the words of the
17 Chairman but also to let all you know that if there's
18 additional resources that may be needed, I think my record
19 speaks for itself as far as supporting law enforcement from
20 the State police, the local police, and especially the
21 judiciary, that we stand ready to assist you. We
22 understand there may be some kinks in the road here with
23 some of the problems that have been revealed. I read the
24 reports and whatnot, but rest assured that I don't think
25 any of us are trying to throw mud at anybody. I think

1 we're trying to work collectively to try to resolve a
2 problem that appears to exist.

3 Thank you, Mr. Chairman.

4 MAJORITY CHAIRMAN MARSICO: Thank you, Mr. Chair.

5 I was going to turn this over to Representative
6 Stephens for comments, but his wife is in labor and so he's
7 obviously there supporting his wife and hopefully newborn,
8 so we wish them the best.

9 Representative Stephens actually was the one that
10 actually advocated for this hearing and to get testimony
11 about this issue, so just so everyone knows that
12 Representative Stephens is very interested in this topic
13 and I'm sure he'll be interested in seeing the video of
14 this testimony today.

15 So with that, I'm going to call up as our first
16 testifier Linda Rosenberg, the Executive Director -- you're
17 already here at the table -- and Robert Merwine, Director
18 of Office of Criminal Justice System Improvements; and Eric
19 Radnovich, the Director of Bureau of Justice Services from
20 the Cumberland County District Attorney's Office. Both
21 Linda and Robert are with the PCCD.

22 Welcome, and you may begin.

23 MS. ROSENBERG: Thank you, Chairman, Members of
24 the Judiciary Committee. We appreciate you inviting us
25 here today.

1 As the Chairman said, I'm joined here with Robert
2 Merwine from PCCD staff. Eric Radnovich actually could not
3 be here. His wife had surgery and Robert Ardner, who is
4 also a member of our staff, our Criminal Justice System
5 Planner, is joined on my right. So he's really an expert,
6 a former police chief as well.

7 Before we got started, I just want to tell you a
8 little bit about the Commission. And really our goal in
9 the criminal justice system is to serve as a criminal and
10 juvenile justice planning agency. And we work with
11 numerous stakeholders across the system to identify
12 different problems, identify strategies to fix those
13 problems, identify evidence-based practices as a way to
14 implement programs to address those strategies, and to look
15 at the outcomes, measure the outcomes, and make
16 recommendations on how to continue to improve those
17 programs. So today, we're really here obviously to talk
18 about the work we're doing in law enforcement and the work
19 we're doing in the information field.

20 So the first question that we're all here to talk
21 about is why fingerprinting? And as we all know, it's the
22 law, so Title 18, Section 9112, requires that all persons
23 arrested for a felony, misdemeanor, and some summary
24 offenses are to be printed within 48 hours. And as I'll
25 explain in my presentation, fingerprints really are the

1 foundation for accurate criminal history records, and this
2 information is essential to public safety.

3 Fingerprints also ensure that individuals in
4 custody are biometrically identified. This improves the
5 accuracy of criminal history data and reduces the
6 likelihood that arrest information is attributed to
7 innocent people.

8 Next, I'd really like to talk a little bit about
9 the offender identification process and how all the pieces
10 fit together to make this work. So as you know, there's
11 really not one entity solely responsible for overseeing
12 this process. Each organization involved has a role in
13 ensuring that their process works correctly and that the
14 fingerprints are captured in a way that they can be shared
15 with other criminal justice agencies.

16 And we have found through our work with numerous
17 stakeholder groups that the solution to making this process
18 work smoothly is through Central Booking. And the goal of
19 Central Booking is to provide for better public safety by
20 making the latest biometric technologies in criminal
21 identification available to all law enforcement agencies in
22 a particular county or region. Central Booking in essence
23 enables police officers to drop off defendants for
24 processing and then go back on patrol quickly and without
25 having to be tied up in the time-consuming booking and

1 arraignment process.

2 And Pennsylvania Central Booking network is
3 considered by the Feds and many other States to be one of
4 the best in the Nation. It relies on secure and
5 standardized technologies to biometrically identify
6 individuals, capture data, and to submit it electronically
7 to numerous local, State, and Federal systems. Once
8 submitted, this information is available within minutes to
9 Federal, State, county, and municipal law enforcement
10 agencies.

11 In addition to capturing fingerprints, most
12 central booking sites also capture the arrest information,
13 they capture mug shots, they capture pictures of scars,
14 tattoos, and marks. They also capture palm prints. All of
15 this information is then stored in various systems across
16 the Commonwealth and is used daily to assist law
17 enforcement and investigations via JNET photo lineup, via
18 facial recognition technologies, or via latent print
19 analysis.

20 The key that holds all these systems together and
21 to make this process work is through a State identifying
22 number called SID, and this number can only be established
23 through proper fingerprinting. It is a number that is
24 assigned to everybody's individual criminal history record
25 and it's used to cross reference records with other

1 criminal justice computer systems. And unlike Social
2 Security numbers, fingerprints cannot be falsified, so SIDs
3 are very reliable.

4 So in terms of the process, after a defendant is
5 fingerprinted, his information is sent to the State Police,
6 onto the FBI to determine if the person has an existing
7 criminal history record, or any other outstanding warrants,
8 wants, or other reasons why law enforcement may be looking
9 for this person. If he has a record, then that record is
10 appended with the new charges. If he does not have a
11 record, then he is assigned a unique SID. The completion
12 of this process ensures that all of the defendant's arrests
13 are added to his criminal history record and then included
14 in all of the appropriate State and Federal repositories.

15 The other half to this process is then to update
16 the defendant's criminal history record with court case
17 disposition. So the courts have this data. They use a
18 unique identifying number called an OTN, or an Offense
19 Tracking Number to track all the cases. So proper booking
20 requires that the OTN number from the courts is linked to
21 the criminal history record via the SID, and without these
22 two numbers being linked together correctly, criminal
23 records can be inaccurate or incomplete and public safety
24 can be jeopardized.

25 So one of the things that you mentioned is how is

1 criminal history information used, and we know that
2 criminal justice agencies obviously rely on this
3 information but law enforcement uses it for identification,
4 for investigations; prosecutors use it for case
5 preparation; judges use it in determining bail and
6 sentencing; probation, parole, corrections all use it to
7 develop supervision plans for classification, for housing;
8 and then also public, private, and nonprofit organizations
9 use this information for employment checks, security
10 clearances, and often to determine if teachers or
11 volunteers are fit to work with children. And finally,
12 government uses this also for making decisions on firearms
13 purchases, the approval of various licenses and
14 certifications.

15 So the last point I wanted to make here with this
16 is that it's important that the criminal history
17 information contain the corresponding case dispositions for
18 all arrests or the arrest information cannot be made
19 available for all these functions that I talked about. So
20 arrest information is only available to law enforcement
21 officers. Arrest information with disposition information
22 where you're linking up that SID and OTN, that information
23 is available for public records.

24 The next slide I talk about sort of starts where
25 the Commission really got actively involved in the issue of

1 fingerprint compliance in the State, and in 2006 we got
2 together and it was really the first time we were able to
3 run a report to determine what the compliance rates were in
4 the State. And we found in 2006 that 67 percent of
5 defendants were fingerprinted, and of that 60 percent, 22
6 percent of those were done ink-based. So when you think
7 that ink-based fingerprints started in 1901 in Scotland
8 Yard we're still using that same technology in 2006 for 22
9 percent of the prints, we had a ways to go in terms of
10 implementing technology.

11 And so what happened is we formed a task force to
12 really look at the quality of criminal history in the
13 Commonwealth and to begin to develop strategies and
14 recommendations on how we wanted to improve the quality of
15 these prints. As I said before, there's obviously no one
16 single agency who's responsible for fingerprints and
17 criminal history records so we brought together all the key
18 stakeholders who were involved in the process.

19 We brought in local law enforcement, prosecution,
20 obviously the State Police, the courts, the Office of
21 Attorney General, corrections, probation, and parole. And
22 we had a series of meetings at this time and what we found
23 that often the causes of the problems in fingerprinting had
24 to do with just the awareness of the importance of
25 fingerprinting. We found that many criminal justice

1 practitioners really didn't understand how important this
2 information was and how often it was used.

3 We also found that there was a misunderstanding
4 in terms of what the policies on when you're supposed to
5 print, particularly in the juvenile system, as well as the
6 laws. We found that some departments were just not
7 prioritizing fingerprints. They weren't providing the
8 leadership and they weren't prioritizing it in their
9 departments.

10 We found that the availability of technology was
11 a problem. We needed to invest in technology across the
12 State.

13 We found that there was either a lack of central
14 booking facilities or there was a lack of staff to support
15 those booking centers or there was a lack of police
16 officers' time to do the fingerprinting.

17 And then finally, and I think most importantly,
18 there was a lack of tools to be able to monitor the
19 compliance rates, so there wasn't really a way for each
20 individual police department to determine and look at a
21 report to find out what their actual compliance rates were.

22 So what we did at the Commission is we formed two
23 workgroups to really begin to develop strategies to address
24 these problems. The first is a Local Technology Workgroup,
25 and that's chaired by Eric Radnovich from Cumberland County

1 DA's Office; and the second is a Fingerprint Workgroup.
2 Both of these workgroups still are functioning today and
3 all of the actions that we've taken today are as a result
4 of those two workgroups and continuing to reassess what
5 we've done in these areas.

6 The Local Technology Workgroup, as I said, that
7 oversees the technologies, the standards, the PCCD Federal
8 funding that we have available to invest in technologies.
9 In the Fingerprint Workgroup, they've been doing a
10 tremendous amount of work and really developing these
11 fingerprint reports and monitoring tools so that we can
12 better track what every department's compliance rates are
13 in the State. And we just rolled out a dashboard that I'll
14 talk about the end of my presentation.

15 To address some of the awareness issues, we did a
16 lot of education, training, and outreach. PSP MPOETC
17 offered a course on the importance of fingerprinting. We
18 developed a virtual training course with Federal dollars
19 with the Chiefs of Police Association that's available and
20 I think there's 10,000 police officers that are registered
21 that can take this course. The courts offered training at
22 their various conferences in the newsletters. PCCD staff
23 regularly meets with county criminal justice advisory
24 boards. Those are the leaders of all the members of all
25 the county leaders of the criminal justice agencies and the

1 counties.

2 But nevertheless, we provide them with
3 information about their compliance rates. The DAs are
4 there, judges are there, the police chiefs of some of the
5 large police departments are there, and we talk about the
6 need for fingerprinting. And we also started in the last
7 couple years providing them with data on actually what the
8 compliance rates are in their counties.

9 We also work with you to enact legislation that
10 authorize booking center fees up to \$300 to help offset the
11 cost of booking.

12 The courts updated their rules on criminal
13 procedure and they added a checkbox on the criminal
14 complaint form where you have to identify if the defendant
15 has been fingerprinted or not.

16 We also work closely with the State Police and
17 with the Chiefs of Police Association, the State Police
18 updated and disseminated their fingerprint policy manual,
19 distributed that statewide, and the Chiefs of Police
20 Association has an accreditation program. They have about
21 250 police departments that are part of that. They added a
22 fingerprint policy as a requirement to become an accredited
23 Police Department in the agency, and they're continually
24 reviewed and assessed to make sure they're following that
25 policy.

1 Then we really invested in the area of technology
2 and in booking centers. When I said that booking centers
3 really we feel are the key to making this work well.

4 Currently, there's 254 central booking centers across the
5 State. These centers include the Live Scan devices. Those
6 are the ones that capture the fingerprints. They include
7 mug shot devices, they include various level of staffing,
8 and the majority of them also have holding cells.

9 The Commission also invested our Federal funds --
10 primarily all of the Federal funds we have available for
11 law enforcement or the majority of them we've invested in
12 buying equipment: Live Scan, CPIN, various equipment for
13 local and State police to help them implement the
14 technologies necessary to fingerprint. So since 2006 we've
15 invested around \$8 million in these technologies.

16 And finally, this is really a thank you and a
17 shout out to you. Since Act 81 was enacted in 2013, almost
18 \$20 million in booking fees have been collected by the
19 counties to help offset the cost of bookings, \$20 million.
20 Not all the counties actually charge these fees. The
21 majority of them do.

22 Also, as I said, monitoring and reporting on
23 municipal police departments and the counties' booking,
24 fingerprint compliance rates is really critical. And AOPC,
25 in conjunction with the State Police, developed a report, a

1 semiannual report that really provides the data necessary
2 so we could go back and educate the individual departments
3 about what their compliance rates are.

4 PCCD has also been working with those individual
5 departments. If their compliance rates are low, then we
6 provide them with technical assistance on how other
7 municipalities and other counties have been able to
8 increase their compliance rates. We also educate them on
9 various training, whether it's training on how to use the
10 booking equipment or training on when they should be
11 printing, et cetera, et cetera. We direct them to where
12 that training is available to help them. And we've also
13 been, as I said earlier, educating DAs and other criminal
14 justice practitioners across the State on what those
15 compliance rates are.

16 And finally, we worked with -- actually Sue
17 Capella from the Penn State Data Center is here. We worked
18 with the data center to establish a dashboard and the
19 dashboard actually provide the compliance rates by county
20 and now by municipality. It's available real time for
21 anybody actually to go out and see what those compliance
22 rates are. This dashboard also provides key performance
23 indicators on different other County criminal justice
24 agencies' programs.

25 Since the release of our municipal dashboard,

1 which was released in mid-June, we've already had almost 25
2 police departments calling, working with Bob. They wanted
3 more detail on what their compliance rates were and how
4 they could go about to increase their compliance rates.

5 So today, the compliance rates, where we stand
6 today, in 2006, as I said, 67 percent of individuals were
7 fingerprinted; 78 percent of those were done
8 electronically. Today, 87 percent of individuals are being
9 fingerprinted and 96 percent of those are done
10 electronically.

11 And since we rolled out the dashboard that I
12 mentioned, since the first quarter of 2014, we've also seen
13 a 1 percent increase in compliance rates statewide, and
14 really that's because we're drawing attention to the issue.
15 It's by making these dashboards available; it's about
16 newspaper articles that are out. People are talking about
17 the importance of fingerprinting, and I think because of
18 that, we're seeing some of these compliance rates come up.

19 I have the ability to do an online real-time
20 demonstration of the dashboards, but I thought I'd wait and
21 see. I was just going to give you sort of a verbal summary
22 of some of the information, and if time permits, we could
23 certainly do a demo of the dashboards if you want. But
24 there's really two screenshots of the dashboards that are
25 available. The first one is a statewide dashboard, and on

1 that dashboard, it includes all the law enforcement
2 agencies, including State Police information. And as you
3 can see, on the back corner it pops out by county what the
4 fingerprint compliance rates are by county. And then the
5 right-hand side you can start looking at what the trends
6 are, statewide trends.

7 So we used to collect the data twice a year.
8 We're now collecting the data quarterly so we can monitor
9 that more closely, the trends, as the compliance rates
10 increase. We're also able now to look at what top 10
11 offenses are occurring in those rates for those offenses,
12 and then finally what types of offenses are not being
13 printed. And so this information will be updated
14 quarterly. It is available on our public website.

15 And then the new dashboard that we just rolled
16 out, this is actually done by county, and we're able to
17 list all the county rates and then break that down by
18 jurisdiction. So we're able to provide the individual
19 rates of every police department within that county. We're
20 also able to provide a summary of what offenses, the
21 percentage of those offenses that are not being printed.

22 And then as police departments call us, contact
23 us, DAs, whomever contact us, we can provide them with the
24 actual data so that they can start scrutinizing that data
25 to see where the errors are and try and correct that data

1 and resolve some of the problems.

2 That's all I have. Any questions? I wanted to
3 get through to give you an opportunity to ask questions if
4 you have any.

5 MAJORITY CHAIRMAN MARSICO: Well, we probably do.
6 Thank you very much.

7 Did you want to make any statements?

8 MR. MERWINE: I will just be happy to address any
9 questions that---

10 MS. ROSENBERG: They're here to answer the
11 questions.

12 MAJORITY CHAIRMAN MARSICO: Okay. Just wanted to
13 clarify that.

14 Just wanted to say that Representative Keller is
15 here, Representative Barbin is here, and Representative
16 Regan is here. Welcome. Thanks for being here.

17 We have a number of questions. First of all,
18 your report, your PowerPoint is very thorough and detailed,
19 and that's very helpful for us and we appreciate you
20 putting that together.

21 I just can't figure this out but this is a law.
22 You pointed out that it's the law to fingerprint. And so
23 we have the courts and police, et cetera, really not
24 following through with the law. I'm sure there's reasons
25 and we'll hear those later today. But on your dashboard

1 just the last thing you pointed out about the dashboard,
2 offenses not fingerprinted, the most serious crimes,
3 felonies, almost 1/4 are not fingerprinted. Is that
4 correct? On that right-hand corner of your---

5 MR. MERWINE: Yes, that is correct.

6 MS. ROSENBERG: Yes, that's correct.

7 MAJORITY CHAIRMAN MARSICO: That's correct?

8 MS. ROSENBERG: Yes.

9 MAJORITY CHAIRMAN MARSICO: So the most serious
10 felonies or the most serious crimes, 25 percent are not
11 fingerprinted. Is that---

12 MS. ROSENBERG: But this is the 25 percent of the
13 ones not printed, right?

14 MR. MERWINE: Correct.

15 MS. ROSENBERG: So of the ones that are not
16 printed, 25 percent of the ones that are not printed are
17 felonies.

18 MAJORITY CHAIRMAN MARSICO: Right. Okay. Okay.

19 MR. MERWINE: It's not 25 percent of the overall
20 number of felonies. It's of the ones that are not
21 printed---

22 MS. ROSENBERG: Right.

23 MR. MERWINE: ---of all the offense types that
24 are not printed, 25 percent---

25 MAJORITY CHAIRMAN MARSICO: Got you. Okay.

1 Okay. Just wanted to get some clarification on that.

2 Did you want to say something?

3 MINORITY CHAIRMAN CALTAGIRONE: I think this need
4 be said, that Executive Director Linda Rosenberg and staff
5 -- I must mention I serve on the Board with PCCD -- I think
6 they do an admirable job. The education, the training, and
7 the money that is used for equipment to help supplement the
8 locals, the police, State Police and whatnot, is a funnel
9 in which a lot of this money is utilized to upgrade their
10 operations.

11 And part of the problem when you look at the
12 State, we have 67 counties, you have a lot of small
13 counties. They of course don't have the wherewithal, they
14 don't have the manpower, the womanpower to do what I think
15 need be done, and there are some cracks that need to be
16 filled up and helped.

17 And of course ergo what our budget being what it
18 is, it's always a matter of dollars because if you need the
19 fingerprint equipment, which can be expensive and I've been
20 in police departments and I've seen how the State Police
21 operates. You've got to have the money in order to buy
22 that equipment, and of course you have to have the
23 training. And many times with the smaller departments,
24 it's kind of difficult to make all of that happen.

25 But that being said, I wanted to ask

1 Ms. Rosenberg how many full-time staff does PCCD dedicate
2 to monitoring police compliance with the fingerprint
3 mandated that's expected?

4 MS. ROSENBERG: Thank you, Representative, for
5 the nice comments.

6 At the Commission we used to have a unit of three
7 individuals who worked on all of our law enforcement
8 initiatives, and through funding cuts and furloughs, we now
9 have one individual, Bob Ardner. He's a former police
10 chief. He does a tremendous amount of work. But
11 monitoring fingerprint compliance rates and providing
12 education is a portion of what he does. He oversees all of
13 our funding for law enforcement initiatives.

14 MINORITY CHAIRMAN CALTAGIRONE: And, Linda, isn't
15 it part of the problem that there's been so many cuts in
16 Federal and State funding that the pot starts to get
17 smaller and smaller? So in order to try to reach out to do
18 some of the things that you and your staff do a great job
19 in helping local communities, the monies just really aren't
20 there to continue to do the things that I know you'd like
21 to be doing.

22 MS. ROSENBERG: Yes, in fact the Federal dollars,
23 and those are the dollars that we use; they're called
24 Justice Assistance Grant dollars. They're all Federal
25 dollars that we are granted from the Department of Justice.

1 Those dollars have been cut by, what, about 60 percent?

2 MR. MERWINE: Sixty percent, yes.

3 MS. ROSENBERG: About 60 percent over the past 5
4 years, and it's an ongoing fight obviously to try to get
5 those dollars.

6 MR. MERWINE: The other comment around the
7 Federal funding, we used to also use what are referred to
8 as NCHIP dollars, National Criminal History Improvement
9 dollars, and all the States used to receive a Federal
10 allocation on those. Those funds have now become
11 competitive so we have to compete for them on an annual
12 basis. Some years we're successful in getting those funds;
13 some years we're not successful in getting those funds.
14 But those criminal history improvement dollars were always
15 funneled towards these types of efforts and initiatives.

16 MINORITY CHAIRMAN CALTAGIRONE: Thank you.

17 Thank you, Mr. Chairman.

18 MAJORITY CHAIRMAN MARSICO: Representative
19 Keller, questions?

20 REPRESENTATIVE KELLER: Thank you, Mr. Chairman.

21 Can you tell me, are PSP's compliance rates in
22 the dashboard here that you've presented?

23 MR. MERWINE: The PSP compliance rates are in the
24 overall statewide dashboard view because the State Police
25 is spread out statewide. Their data is reflected within

1 the statewide view. They do receive on a quarterly basis
2 the data files that we receive at PCCD with all of their
3 individual records. That's also available to all the
4 locals as well if they request that information.

5 REPRESENTATIVE KELLER: All right. Thank you
6 very much.

7 MR. MERWINE: You're welcome.

8 MAJORITY CHAIRMAN MARSICO: Representative Ellis.

9 REPRESENTATIVE ELLIS: Thank you, Mr. Chairman.
10 Thank you for your testimony today.

11 Last week, we were in my home county of Butler
12 and we went down to Cranberry Township and we saw their
13 system, and they indicated that they got it almost a decade
14 ago and it was at a cost of about \$50,000. They're doing
15 upgrades significantly less. So have you seen the
16 compliance going up as the costs of technology come down?
17 And I guess what I'm saying is can we get it cheaper? Are
18 there ways out there? I mean my son has an iPhone and he
19 opens and closes his screen with his thumbprint and it was
20 a free app. So I'm just wondering.

21 MS. ROSENBERG: The cost for the equipment now is
22 down to about \$37,000 for the workstation, and there is a
23 \$10,000 annual maintenance fee and line fee that after they
24 buy the equipment, there's that additional \$10,000. One of
25 the good things about our network is we follow the standard

1 so all of the equipment adheres to standards and we can all
2 share information.

3 When departments start going on their own and
4 buying equipment that doesn't adhere to those standards
5 that may be cheaper, it's not going to fit into the overall
6 network and it's not going to be able to share and exchange
7 information in the same way. So we've really standardized
8 and we really have experts who look at all the various
9 venders and all the technologies and we've standardized on
10 those technologies. So when we invest our dollars, it's on
11 that same suite of standard technologies.

12 REPRESENTATIVE ELLIS: And so we have one vender
13 for all the police departments in Pennsylvania? Is it a
14 sole-source kind of---

15 MR. MERWINE: Currently, there is one vender that
16 is certified. There is a suite of products that they offer
17 that are certified, so there are a couple of different
18 options that they can choose from, whether it includes 10-
19 print and the palm device or not. Obviously we encourage
20 them to invest and get the palm device; it's a little more
21 expensive. But we have been driving down the \$37,000 price
22 tag that Ms. Rosenberg referenced. It includes also the
23 photographic, the CPIN, the photo-imaging network.

24 REPRESENTATIVE ELLIS: Yes.

25 MR. MERWINE: Those two units historically back

1 in 2006 would have cost a county about \$80,000 for those
2 two units. So we've pretty much over the years cut that
3 cost in half.

4 REPRESENTATIVE ELLIS: So I see on the dashboard
5 it looks like some of Pennsylvania's most rural areas
6 obviously with the smallest amount of police enforcement,
7 the smallest budgets, those are the ones where we're really
8 going to need assistance to get them up to compliance
9 levels. Would that be an accurate statement?

10 MS. ROSENBERG: Well, it's interesting. We
11 looked at this today, this morning, and if you look at the
12 counties with the five worst compliance rates and you
13 compare them to the five counties with the best compliance
14 rates, they have the same amount of equipment. So it's not
15 always equipment that ensures that---

16 REPRESENTATIVE ELLIS: I couldn't hear you.
17 Could you repeat that statement? I think it might have
18 been important.

19 MS. ROSENBERG: The five counties with the worst
20 compliance rates had the same amount of equipment as the
21 five counties with the best compliance rates. So my point
22 in that is it's not always equipment that causes the
23 problems. There's numerous reasons that can cause the
24 problems. It's not always just lack of having the
25 technology available to them.

1 REPRESENTATIVE ELLIS: So they have the same
2 amount of equipment, they just aren't doing it, as the
3 Chairman pointed out earlier?

4 MS. ROSENBERG: It appears that way.

5 REPRESENTATIVE ELLIS: All right. Thank you very
6 much.

7 MAJORITY CHAIRMAN MARSICO: Representative Grell.

8 REPRESENTATIVE GRELL: Thank you.

9 Following up on that, the 13 percent that are not
10 fingerprinting, what do you find are the major reasons why
11 those 13 percent aren't doing the fingerprinting? And does
12 not fingerprinted also include fingerprints that were
13 unsuccessful, that were unreadable or whatever?

14 MR. MERWINE: Correct. And that was one
15 clarification I was going to make. The 13 percent does
16 represent all the fingerprints that were not successfully
17 matched with the court case dispositions. So some of those
18 cases could have been successfully fingerprinted, but due
19 to a number of reasons, one of the common reasons is the
20 Offense Tracking Number that Linda had referenced earlier,
21 that if the Offense Tracking Number that's recorded at the
22 time of fingerprinted, which is called the OTN, if when
23 it's being processed through the MDJ system, if they don't
24 match up the same OTN, if for whatever reason that
25 information didn't get passed through and the clerk of

1 court assigns a new OTN, there's now two OTNs for that same
2 incident and they won't match up on the back end. So our
3 report shows that that individual is not being
4 fingerprinted because we weren't successfully able to
5 connect it with criminal history. So that is one potential
6 cause along the way for those mismatches. So in that case
7 a print was successfully taken but it did not match with
8 criminal history.

9 As you also alluded to and referenced, sometimes
10 the prints are unreadable. If they come in through ink
11 cards, until they get scanned on the back end, they
12 determine that the prints aren't of the quality that are
13 necessary and they will get kicked back to local law
14 enforcement to retake those prints. So there could be a
15 lag there until those records connect up as well.

16 MS. ROSENBERG: And really we view the dashboard
17 as a tool, so you could use it to see where there's lags
18 and where there's communities that don't look like they're
19 printing correctly. And then we can work with them to give
20 them the data to drill down to figure out what the problems
21 are with the data. And that's what Bob's been doing with I
22 think 30 departments since we've rolled out that municipal-
23 level dashboard in mid-June.

24 So they're seeing the need, they're seeing the
25 problems, and they're seeking out help now that we're able

1 to provide them with that data and now that the data is
2 being made available publicly.

3 REPRESENTATIVE GRELL: And one other question.
4 Of the 254 booking centers that you talked about, are all
5 of those properly equipped with the fingerprinting
6 equipment that they need in order to tie into your system?

7 MR. MERWINE: For capturing the 10-prints, yes.

8 MS. ROSENBERG: Yes.

9 MR. MERWINE: Not all of those are outfitted with
10 a palm print reader. The majority of them do have the palm
11 now, but all of them do have the 10-print devices.

12 REPRESENTATIVE GRELL: Okay. And is that a
13 county expense or a local police department expense or a
14 State expense or a combination?

15 MR. MERWINE: It's a combination of all of the
16 above actually. Depending upon where the booking center is
17 located, it could be located in a county facility and the
18 county has taken on the burden of funding that and staffing
19 that. A lot of times you'll have local law enforcement,
20 you'll have five departments or six departments go
21 together, they'll purchase the equipment, put it in one
22 location, and then share those costs together.

23 The clean line connection that connects the State
24 Police system with the local booking center, that's
25 actually a shared cost between the State Police and the

1 locals. They each pay half of that line fee cost.

2 REPRESENTATIVE GRELL: Okay.

3 MR. MERWINE: So all of the departments.

4 REPRESENTATIVE GRELL: Okay. Thank you,

5 Mr. Chairman. Thank you.

6 MAJORITY CHAIRMAN MARSICO: Representative

7 Barbin.

8 REPRESENTATIVE BARBIN: Thank you, Mr. Chairman.

9 And thank you, Ms. Rosenberg, for the information.

10 One of the things I had a question about, I think
11 the graphics that you're providing are really very helpful,
12 but I was wondering on the local booking centers, our
13 courts in Cambria have recently moved to a central booking
14 location. Are there any requirements under our State law
15 now that says when -- so the court has moved everybody to a
16 central booking location, but is there anything in law that
17 requires that when that booking, that initial -- they take
18 the prisoner up to Evansburg to have them booked, is there
19 a requirement right then at that booking center that their
20 fingerprints be taken at that point?

21 MS. ROSENBERG: Is that 48 hours?

22 MR. MERWINE: Yes.

23 MS. ROSENBERG: So it's 48 hours---

24 REPRESENTATIVE BARBIN: Okay. But is---

25 MS. ROSENBERG: ---required to take the prints.

1 REPRESENTATIVE BARBIN: I guess what I'm trying
2 to ask is it seems that a lot of courts on their own have
3 decided that we need to get more control over this process.
4 Is there something that is uniform, a procedure, maybe not
5 a law, that says when someone is taken to a central county
6 booking location, there's a requirement or a protocol that
7 says you need to take the fingerprints right then and
8 there?

9 MR. MERWINE: Well, there is the requirement on
10 the arresting officer to take and forward the prints to the
11 central repository within 48 hours. There are
12 recommendations out of the courts to the local magistrates
13 that they require and make sure that a print is taken prior
14 to hearing the case, but that is not mandatory. That is
15 just a recommendation of best practice.

16 REPRESENTATIVE BARBIN: I'm just trying to do it
17 from a local perspective. Do all 67 of our counties or at
18 least the counties where the courts have made a central
19 booking location, do they all have the equipment at the
20 location that would allow for the fingerprints?

21 MS. ROSENBERG: Well, they have the video
22 arraignment.

23 MR. MERWINE: Yes, that's correct. A lot of them
24 have video arraignment but not all of the courts have
25 central booking locations in the court.

1 REPRESENTATIVE BARBIN: The ones that do, if you
2 have a county central booking location, would you by
3 definition have this equipment?

4 MS. ROSENBERG: Yes.

5 MR. MERWINE: Yes.

6 MS. ROSENBERG: Yes.

7 REPRESENTATIVE BARBIN: So a local court, if
8 they've decided to have a central booking location, could
9 also make their own order that would say when someone's
10 brought to a local booking center, that has to be done
11 immediately?

12 MS. ROSENBERG: Yes. Yes.

13 REPRESENTATIVE BARBIN: And is that in fact done
14 in some counties?

15 MR. MERWINE: Yes.

16 MS. ROSENBERG: Yes.

17 MR. MERWINE: Sometimes it is, yes.

18 MS. ROSENBERG: In Centre County. Yes, some
19 counties.

20 REPRESENTATIVE BARBIN: All right. Thank you.

21 MS. ROSENBERG: And some of them use video
22 arraignment technology so they're able to do arraignment
23 right there with the DJs at a remote location from the
24 booking center.

25 REPRESENTATIVE BARBIN: We've moved to video

1 arraignment?

2 MS. ROSENBERG: Yes.

3 REPRESENTATIVE BARBIN: Okay. Thank you. I
4 appreciate it.

5 MAJORITY CHAIRMAN MARSICO: Representative
6 O'Neill.

7 REPRESENTATIVE O'NEILL: Thank you, Mr. Chairman.

8 You had mentioned that 60 percent of your funding
9 has been cut by the Federal Government. Is that unique to
10 Pennsylvania or is that across the country?

11 MS. ROSENBERG: Across the country.

12 REPRESENTATIVE O'NEILL: Oh, it is. And do we
13 know why? Is there a reason for it other than---

14 MS. ROSENBERG: Well, I guess different
15 priorities. Well, the Department of Justice will tell you
16 it's because the cost of prisons have gone up so much that
17 they've bled money away from their discretionary grant
18 programs to cover the prison system at the Federal level.
19 So I think we've worked hard in educating them on the
20 importance of these funds and the outcomes of these funds.
21 In fact, they actually zeroed them out at one point and
22 then we were able to get the money restored back to that 60
23 percent level.

24 REPRESENTATIVE O'NEILL: So those monies are just
25 coming from their general fund budget and not from some

1 dedicated fund that is brought in? Like, for example, we
2 have drug money and it's dedicated to go to certain things
3 to help certain counties. It's not a fund like that?

4 MS. ROSENBERG: Well, it's Federal. It comes out
5 of the Department of Justice. And so Pennsylvania gets an
6 allocation---

7 REPRESENTATIVE O'NEILL: Right.

8 MS. ROSENBERG: ---and we're given guidelines
9 that are pretty discretionary on how we use those dollars.
10 And there's also a share that goes directly to the counties
11 and they could use that money as well. We get---

12 REPRESENTATIVE O'NEILL: Well, what I was
13 referring to was the Federal Government is not like taking
14 confiscated drug money or something like that and using it
15 as a dedicated fund for something like---

16 MS. ROSENBERG: Oh, I don't know about that.

17 REPRESENTATIVE O'NEILL: About that, okay.
18 Great.

19 MS. ROSENBERG: Yes, I'm sorry. I misunderstood
20 you.

21 REPRESENTATIVE O'NEILL: All right. Thank you.
22 I appreciate it.

23 MS. ROSENBERG: Sure.

24 MAJORITY CHAIRMAN MARSICO: Representative Costa
25 for questions.

1 REPRESENTATIVE COSTA: Yes, thank you,
2 Mr. Chairman.

3 Yes, I was looking at your chart with the
4 fingerprints compliance today. In 2006 we had 33 percent
5 were not complying with and in 2013 13 percent. Is that
6 the agencies not complying or is that the defendants? I
7 know back when I was a police officer, a misdemeanor 3 you
8 would take them in, they'd be fingerprinted, and now it's a
9 misdemeanor 1 before you can take them in directly.

10 Otherwise, it's site summons. And then a district judge
11 has to order them to be fingerprinted. Are we losing any
12 of them in this mix when they're going there? Can we
13 increase that 13 percent if we watch those better or are
14 they just becoming fingerprinted?

15 MR. MERWINE: There is a certain number of those
16 cases that are issued summons orders that do not show that
17 need to be tracked down, so they are reflected in that 13
18 percent. So if we could do a better job of tracking down
19 those individuals and not issuing a frequent order by
20 summons in some cases and getting them while we have them,
21 that of course would help improve that no-show rate that we
22 encounter there.

23 REPRESENTATIVE COSTA: Okay. Because I thought
24 we'd be losing them somewhere along that line because when
25 a district judge orders that, I'm not sure if there's

1 anybody tracking that point afterwards.

2 MR. MERWINE: They do have the fingerprint order
3 on file but it's really up to the arresting officer at that
4 point to track that individual down if they don't show up
5 when they were appointed to show.

6 REPRESENTATIVE COSTA: Okay. Thank you very
7 much.

8 Thank you, Chairman.

9 MAJORITY CHAIRMAN MARSICO: Representative Regan,
10 question.

11 REPRESENTATIVE REGAN: Thank you, Chairman
12 Marsico. Thanks for being here, folks.

13 Just a quick question, and you mentioned about
14 fingerprints that are kicked back because they're not
15 readable, I know that we used to have that problem quite a
16 bit, especially when we were using ink. I'm sure a lot of
17 Department's are still using ink throughout the -- but I
18 guess my question is I know that from my experience many
19 times when those were kicked back, the defendant had made
20 bail or was on probation or parole so you had actually make
21 a note to next time they were before the court or in the
22 courthouse to try to grab them to reprint them and I think
23 that's where things kind of fall through the cracks.

24 I often thought that it would be a better idea to
25 have that request go to probation and parole or pretrial

1 services or wherever this person is arresting at the time
2 as opposed to back to the police department. I think you'd
3 have a much better recapture rate. And I think a lot of
4 times that's when these felonies are going unreported. And
5 from an officer safety point of view when guys are relying
6 on an NCIC printout or an NCHIP printout or before they are
7 going to hit a door, having something like that, a felon in
8 possession of a firearm or whatever charge not on there is
9 problematic. Thank you.

10 MAJORITY CHAIRMAN MARSICO: Anyone else?

11 I have a question with the funding. You had
12 mentioned earlier in your statement that you thought there
13 was adequate funding for equipment. Then you said that
14 there was not adequate funding or there was a cut through
15 the Federal Government of 60 percent or something like
16 that, right? Now, is there adequate funding for equipment?

17 MS. ROSENBERG: Well, we have funded all the
18 requests for booking center equipment that we've received.
19 We haven't had any additional requests for equipment that
20 we've had to turn down.

21 MAJORITY CHAIRMAN MARSICO: Okay.

22 MS. ROSENBERG: We used a lot of stimulus money
23 really to pay for the most recent round of equipment as
24 well as upgrades to the existing equipment. So there are
25 departments who may want equipment that don't want to

1 implement the whole central booking. They want to have
2 Live Scan device but not part of the overall booking. So
3 there are those types of request that people make.

4 MR. MERWINE: Correct. The largest fee that we
5 have difficulty covering within the counties in the booking
6 centers, and this speaks to the Act 81 booking fee, the fee
7 that collected is sufficient to cover the cost of the
8 equipment and the lines in most counties. As we indicated,
9 through 2013 we've dispersed almost \$20 million worth of
10 fees back out to the counties to pay for that equipment.

11 But the real expense in a booking center though
12 is the full-time staff that it requires to run a booking
13 center if you want to have it booked 24/7. So though the
14 fees are collected through Act 81 are typically sufficient
15 to cover the booking center plans and cover the cost of the
16 maintenance fees and ongoing replacement of equipment that
17 exists where the locals struggle in maintaining the
18 staffing to staff that center 24/7 so that a line officer
19 can bring an individual in, drop them off, and then get
20 back out on a patrol and have the staff handle it. A lot
21 of locations have the equipment but they don't have the
22 staff there supporting a 24/7 so now the officer has to
23 stay there, do the full booking process, which takes them
24 off of the road in continuous patrol.

25 MINORITY CHAIRMAN CALTAGIRONE: Linda, you had

1 indicated that there are some other minor requests. And
2 following up on the Chairman, would there be monies
3 available for that additional request that they're making
4 for the smaller types of equipment, the handheld stuff, and
5 some of the other areas?

6 MS. ROSENBERG: I mean what we've done most
7 recently is we are investing with the State Police in
8 equipment so law enforcement can do one printing. So that
9 was sort of a large grant to State Police to enhance the
10 AFIS system to allow the departments then to buy those
11 devices where they have a one printer, they can immediately
12 identify somebody. So we're helping to build the
13 infrastructure and the next phase will then help pay for
14 some of the equipment for law enforcement.

15 MAJORITY CHAIRMAN MARSICO: Okay. Anything else?
16 Thank you very much for being here. This was really great
17 testimony and we appreciate you being here. Thank you.

18 MR. MERWINE: Thank you.

19 MAJORITY CHAIRMAN MARSICO: Our next testifier is
20 Mark Bergstrom. Mark is the Executive Director of the
21 Pennsylvania Commission on Sentencing, very familiar with
22 the Committee.

23 Welcome, Mark. How have you been? Thanks for
24 being here.

25 MR. BERGSTROM: Thank you.

1 Good morning, Mr. Chairman. Chairman Marsico,
2 Chairman Caltagirone, Members of the Committee, I'm Mark
3 Bergstrom, Executive Director of the Pennsylvania
4 Commission on Sentencing. I have submitted written
5 testimony so I'll just highlight some of the issues that
6 weren't covered by Ms. Rosenberg and PCCD staff.

7 What I'd like to focus on is not so much the
8 underreporting of fingerprinting or of SIDs but more how
9 the information in the repository, the SID and OTN and
10 other kind of information about arrests and convictions, is
11 used by the Commission to meet some of the mandates that
12 the Commission has. And I'd like to focus on three areas
13 of responsibility. One is the use of conviction
14 information at sentencing, the second is the use of arrest
15 information in determining risk of re-offense, and the
16 third is the use of arrest and conviction information to
17 evaluate the effectiveness of programs, sentences, and
18 other dispositions.

19 The Commission is required by statute to adopt
20 guidelines for sentencing, and among the factors the
21 Commission is required to consider are criminal history,
22 and specifically to identify or recommend increased
23 severity for defendants previously convicted of or
24 adjudicated delinquent of one or more misdemeanor or felony
25 offenses committed prior to the offense. The Commission is

1 also required to consider the same factors as prior
2 convictions or adjudications when developing
3 recommendations for the imposition of fines or the use of
4 community service.

5 And the Commission also has a broader mandate to
6 monitor sentences imposed either relevant to the sentencing
7 guidelines or to mandatory sentencing provisions. So,
8 Mr. Chairman, as you had mentioned earlier, statutes such
9 as three strikes for repeat and violent offenders or
10 Jessica's Law that deals with repeat sex offenders or even
11 DUI or drug trafficking mandatories, those are all
12 provisions of law that provide for enhanced penalties
13 linked to prior conviction offenses. So if you don't have
14 information in the criminal record, in the RAP sheet about
15 a conviction for those kind of offenses, you can't very
16 easily use it as a predicate for sentencing when that
17 repeat offender is back in court.

18 So one very important aspect or use of criminal
19 history information is in that prior record. And I think
20 the reason that is an important consideration both within
21 the guidelines and in statute is that an offender coming
22 through the system multiple times may be deemed more
23 culpable or more blameworthy and I think the General
24 Assembly and the Commission has sought to enhance the
25 sentences that are imposed to promote things like

1 retribution or deterrence or incapacitation. So missing
2 information can really undermine that purpose.

3 The second way the Commission uses information
4 from the repository, so fingerprint-based information, is
5 when we are trying to address criminal behavior. So beyond
6 conviction offenses, the Commission is required to take
7 into account the behavior of individuals, and at times
8 specifically arrest information, as one factor that is
9 considered in trying to determine the risk that a person
10 poses of reoffending. So the Commission has a specific
11 mandate to develop a risk assessment instrument for use at
12 sentencing. The Commission has been mandated to adopt
13 parole guidelines and guidelines for resentencing following
14 revocation of probation, recommitment ranges for revocation
15 of parole.

16 In all of those instances the Commission is in
17 effect trying to determine if a given offender is a higher
18 risk of re-offense because of background information. And
19 one important piece of information are number and types of
20 prior arrests and when those arrests occurred. So even if
21 they didn't result in convictions, the arrest information
22 is very meaningful. And that's not just the Commission's
23 research; that is just sort of general research out there
24 about forecasting criminal behavior, generally sees arrest
25 information as a powerful and important factor to consider,

1 among other things.

2 So when we're thinking about whether the court
3 feels that a specific offender is at high risk of re-
4 offense or if the parole board is looking at an offender to
5 try and determine whether the person is a good risk to
6 release on parole, numerous behavioral factors, including
7 arrest information, is an important consideration.

8 The third area in which the Commission relies on
9 information in the repository, and this is both arrest and
10 conviction information, is for the research and evaluation
11 we're required to do. The Commission has a general mandate
12 to evaluate sentencing practices and programs and then we
13 have specific mandates from the General Assembly to look at
14 various correctional programs, including the State
15 Motivational Boot Camp, the State Intermediate Punishment
16 Program, and the Recidivism Risk Reduction Incentive
17 Program, or RRRRI. And those are all programs that I think
18 appropriately the General Assembly is interested in whether
19 they work or not, and if they work, who they work best for.

20 And so the Commission, as part of its general
21 mandate for determining effective programs for sentencing
22 and then specifically for those programs, is required to
23 determine whether offenders succeed or don't succeed in
24 those programs as compared to other programs, regular
25 incarceration, probation, whatever the other alternatives

1 are the court might consider.

2 In order to evaluate those kind of programs, it's
3 important to have a number of measures of outcomes, and so
4 if we look at an individual that is sentenced to the State
5 Motivational Boot Camp, what we want to do is compare that
6 person to an individual that would serve a regular sentence
7 in State prison, a very similar type of individual, and
8 then compare the outcomes. And the outcomes we looked at
9 are generally re-arrest, reconviction, and recommitment to
10 the Department of Corrections or to another correctional
11 facility.

12 So if you look at those three measures, it's
13 important that we have both arrest and conviction
14 information, that it be complete and accurate in order to
15 sort of weigh the outcomes of these competing programs so
16 that we can give recommendations not only to the General
17 Assembly but to courts in making good decisions about the
18 best outcome in terms of public safety and in terms of
19 cost-benefit, you know, making sure the right programs are
20 targeted for the right types of offenders. So those are
21 the three areas where the Commission relies on information
22 in the repository.

23 And as Ms. Rosenberg said, I think it's really
24 important to recognize that for that information to be
25 accurate and complete, it includes a couple of pairing of

1 information. Certainly one is on the court side to make
2 sure that every case coming through the system has an
3 Offense Tracking Number, an OTN. And I think the
4 Administrative Office of the Courts does an exceptional job
5 of setting up a good system to make sure that that's
6 readily available.

7 In fact, the Commission has a web-based, a JNET-
8 based sentencing application the courts use to report all
9 sentences to us. And as part of that application, a user
10 in the county will enter the Offense Tracking Number in our
11 system, and through JNET will be able to identify both case
12 and offender information from the court system, from the
13 Common Pleas Case Management System, and import that into
14 our system and populate our screens. That reduces errors
15 but it also makes sure that we have a clean connect between
16 what the court has and what we have in our records. So OTN
17 is one of those identifiers that's critical to have, and
18 again, the courts do an exceptional job of having a system
19 in place that reliably provides that information.

20 The second piece of information that you're
21 having a hearing about is the fingerprinting side, which
22 leads to the State ID, the SID assignment. And it's really
23 the pairing of the two things, the pairing of the OTN with
24 the SID that gives you the complete information.

25 If you think about SID as sort of a file folder,

1 what we want to have in that personal file folder is all
2 the information about that offender, all of the arrests,
3 all of the convictions, all of the disposition information
4 so that then when we're trying to figure out if this person
5 is a high risk or what kind of outcomes this person has in
6 terms of programming, we're able to look at the whole
7 person.

8 When we're looking at sentencing decisions, we're
9 often thinking about a specific conviction offense and what
10 sentence to impose for that, but when the Commission is
11 starting to look at parole decisions, we have to look at
12 everything the person had done and all of the conviction
13 offenses and sort of aggregate that to look at some kind of
14 parole recommendation or parole decision. So I think it's
15 just very important to make sure that we not only address
16 the fingerprinting issue that we also make sure that the
17 pairing or the coupling of OTN with SID is part of that
18 process as well.

19 So I think I'll conclude with that. I would want
20 to mention a couple steps the Commission has taken to try
21 to promote better practices in this area. Within our
22 sentencing application and SGS Web, we require the Offense
23 Tracking Number, and as of January 1st of this year, we now
24 require the SID. One of the reasons we hesitated in
25 requiring SID was we recognized there were cases where

1 there was no SID, and so we didn't want to do anything to
2 frustrate the reporting of sentences to us, but on the
3 other hand, we really wanted to promote best practices and
4 that includes fingerprinting at every case and having an
5 SID for the case.

6 So we are working with counties and with users to
7 try to identify and obtain SIDs if they are otherwise
8 missing so that those cases are reported to us, but I think
9 this hearing is very important and I think that's a
10 critical area to look at.

11 I've often suggested that it would be helpful to
12 have some bright line in the system or someone in the
13 system as a gatekeeper to make sure a case doesn't proceed
14 the whole way through its life without a fingerprinting
15 occurring and an SID being assigned. There's a lot of
16 difficulties in doing that, a lot of problems, but I think
17 this hearing provides an opportunity to identify what the
18 issues are or problems and trying to see if there are ways
19 to improve practices so that we can get full compliance.

20 So thank you for your attention and I certainly
21 welcome any questions.

22 MAJORITY CHAIRMAN MARSICO: Well, thank you very
23 much for your testimony. Questions, Members?

24 Chairman Caltagirone.

25 MINORITY CHAIRMAN CALTAGIRONE: Mark, I serve

1 with you, and again, you do an excellent job.

2 MR. BERGSTROM: Thank you, sir.

3 MINORITY CHAIRMAN CALTAGIRONE: God bless you.
4 You're like a hound dog. You track all this information
5 down. Good job.

6 MR. BERGSTROM: Thank you.

7 MAJORITY CHAIRMAN MARSICO: This was very
8 important to us, your testimony---

9 MR. BERGSTROM: Great. Appreciate that.

10 MAJORITY CHAIRMAN MARSICO: ---and so we thank
11 you very much.

12 MR. BERGSTROM: You had mentioned Representative
13 Stephens not being here---

14 MAJORITY CHAIRMAN MARSICO: Yes.

15 MR. BERGSTROM: ---but the leadership role he's
16 taken, Representative Stephens is now a member of the
17 Sentencing Commission and we're very happy to have him on
18 the Commission and he's been very active in trying to
19 address this issue on our behalf as well.

20 MAJORITY CHAIRMAN MARSICO: Well, good. Thank
21 you very much.

22 MR. BERGSTROM: Sure. Thank you.

23 MAJORITY CHAIRMAN MARSICO: Thanks for your time.

24 Next to testify is Deputy Chief John Livingood,
25 the Abington Township Police Department.

1 Welcome, John.

2 DEPUTY CHIEF LIVINGOOD: Thank you. Good morning
3 and thank you, Mr. Chairman, Members of the Committee, for
4 giving me an opportunity to testify here this morning.

5 My name is John Livingood and I am the Deputy
6 Chief of Police at Abington Township Police Department in
7 Montgomery County, Pennsylvania. My direct responsibility
8 within our department is as Commanding Officer of the
9 Investigative Division, and most of my 42 years of criminal
10 experience, criminal justice experience in Abington, has
11 been spent in criminal investigations. So therefore, I
12 know the value of fingerprints; I know the importance of
13 this subject, the topic we're talking about here today.

14 And as you can imagine, I was astonished really
15 to learn that 85 percent was our compliance rate of the
16 people who we arrested that ended up getting fingerprinted.
17 I would have bet that it was much, much higher than that.
18 But when we went back and were presented with the figures,
19 that in fact is what it was. That was for 2012.

20 So we determined we're going to do something
21 about that, and what I did was I reviewed every single one
22 of the cases that did not get fingerprinted, the failure
23 cases if you will, to find out the reason for that. And we
24 have done a pretty good job of that I think and we have
25 come up with some solutions that I'll share with you here

1 this morning.

2 In order to understand how our experience might
3 relate to other police departments and central booking
4 stations throughout the Commonwealth, let me just tell you
5 a little bit about Abington Township. We are a community
6 of about 15-1/2 square miles and have about 56,000 full-
7 time residents. We have a Department of 93 sworn members.
8 We have a full-time booking center that we share with our
9 neighboring agencies if they choose to use it. We support
10 the entire thing. And we have a part-time employee whose
11 job is to do the bookings and run that central processing
12 center.

13 We support that center with the fees that we
14 collect for not only the criminal processings but also a
15 number of people that come in to have records checks,
16 clearances, employment stuff done, and we charge a fee for
17 that as well. And that all helps to support and pay for
18 that employee, as well as the maintenance and upkeep on the
19 equipment.

20 And I want to talk very briefly, and I don't want
21 to repeat what -- Ms. Rosenberg did such an excellent job
22 of explaining how the process works. But I think it is
23 important that you hear a little bit of it from a police
24 perspective.

25 Criminal histories are commonly referred to as

1 RAP sheets, and they are based totally on the known or
2 rolled fingerprints of an individual. When a person is
3 arrested, their known fingerprints are taken on a Live Scan
4 device along with their digital photos or mug shots.

5 Once the prints of the arrestee are taken, they
6 are transmitted electronically to the Pennsylvania State
7 Police Central Repository and their Automated Fingerprint
8 Identification System, or AFIS. Within minutes, AFIS will
9 determine if that set of known prints has been previously
10 taken and therefore whether the person was previously
11 arrested. If the person had been previously arrested, the
12 new arrest and charges are added to the already existing
13 ones and a new RAP sheet is transmitted to the agency that
14 does the processing. If there was not a previous arrest,
15 the fingerprints are searched through AFIS and no previous
16 arrests were found, then they RAP sheet will return with
17 just the new arrest on it. In either case, it will also
18 list the unique personal identifiers of the arrestee.

19 And the important thing there is that it does not
20 matter what name, date of birth, Social Security number, or
21 any other piece of information an arrestee gives us. It is
22 based totally, completely on their fingerprints being
23 identified by AFIS.

24 It is important to note that fingerprints that
25 are submitted to AFIS can be searched. Those RAP sheets

1 and criminal histories can be searched without having the
2 fingerprints. And this happens every single minute of
3 every single day by police officers and State troopers
4 across this Commonwealth. They stop somebody, they need to
5 know if that person is wanted, they need to know what is
6 the past history of this individual, what have they been
7 arrested for in the past. And typically, they cannot take
8 fingerprints out on the scene of a car stop, but what they
9 can do is get the information from the person, their
10 personal identifiers, they run them through the computer
11 and they will also query on the same database that is based
12 on the initial fingerprints. So that is usually how it
13 works.

14 The reasons that I have found that so many of
15 these people who should have been processed were not,
16 there's really a couple of reasons for it and I'm going to
17 try to cover them for you very quickly.

18 Just to review, in Pennsylvania if the highest
19 offense charge is a misdemeanor of the second degree, then
20 a warrant will not be used but rather a criminal summons.
21 And a criminal summons is what I have determined is the
22 major reason that many of these are falling through the
23 cracks and not being done. In cases where the highest
24 degree charge is a misdemeanor in the first degree, the
25 issuing authority has the discretion to file criminal

1 summons or a warrant depending on the circumstances.

2 Pennsylvania Rules of Criminal Procedure 510
3 specify how cases filed by criminal summons will proceed.
4 After the affiant police officer submits the criminal
5 complaints to the Magisterial District Court, the court
6 will mail the defendant the criminal summons, a copy of the
7 criminal complaint, and a fingerprint order card. A copy
8 of the fingerprint order card is also mailed to the
9 arresting agency. The fingerprint order card instructs the
10 defendant to report to the arresting agency for
11 fingerprinting prior to the date set for the preliminary
12 hearing.

13 Ideally, the defendant comes in promptly and is
14 processed, meaning fingerprinted, and the arresting agency
15 returns the fingerprint order card to the Magisterial
16 District Court indicating the person has been processed.
17 This is a major point of breakdown in the system.

18 We determined there were two primary reasons for
19 these failures. The first has to do with the courts. One
20 of our district courts, we have two in Abington Township,
21 did not send out the fingerprint order cards. The district
22 judge had been reluctant. Fairly recently, his predecessor
23 advised him not to send them out. And the rationale was so
24 that if charges were later dismissed or dropped, it would
25 not appear on that defendant's record. But that is not

1 what the Rules of Criminal Procedures say should occur.

2 So this was a rather easy fix for us. We met
3 with both of our district justices, explained everything to
4 them, and they both will now comply with that. And we
5 think that move alone will have a significant impact on
6 reducing the number of failures that we are experiencing.

7 Also, sometimes the District Courts fail to make
8 sure the person is processed before their preliminary
9 hearing or the preliminary hearing is waived. Now, in
10 Montgomery County we have a major initiative underway to
11 persons who were arrested and incarcerated, to get them to
12 waive that preliminary hearing over video rather than
13 transporting them down from the prison to the police
14 station, taking them from there over to the District Court,
15 and then having them decide there that they are going to
16 waive hearing.

17 So the public defender meets with them ahead of
18 time in the prison, explains everything to them, sees what
19 they can do as far as getting us to either reduce bail or
20 whatever the case might be, and those are then waived
21 electronically over video and that person is never brought
22 down. So if they weren't processed initially, this is
23 another failure point as well and it's up to both the
24 police and the District Court to ensure when those waivers
25 occur, we have to make sure that processing has already

1 occurred.

2 We are taking an added step in addition to the
3 fingerprint order card that the courts are sending out. We
4 also have a letter that we're sending out to defendants who
5 have not quickly responded to that fingerprint order card.
6 And the letter that we're sending out indicates that they
7 need to come and immediately or a warrant will be issued
8 for their arrest. And we have asked for cooperation from
9 our District Courts regarding this and they have said they
10 will help us out with that.

11 If they don't respond to either the fingerprint
12 order card or the letter, at least we will be alerted, as
13 will the District Courts, and we'll be able to address it
14 when in fact the person shows up for their preliminary
15 hearing.

16 So the bottom line on the part with the courts is
17 that it is a shared responsibility. It's not solely on the
18 courts but certainly they play a major role in it. And
19 it's not solely on the police but we also play a role.

20 There's also a secondary cause that I have found
21 that led to a lot of these failures and that has to do with
22 the police department. Many officers, young, aggressive
23 officers, particularly working drug cases, would arrest
24 somebody, they would charge them with possession or
25 whatever the appropriate charges were, and they would tell

1 them -- they were well-meaning in doing this and were
2 trying to really do a good job. As I said, these are
3 young, aggressive officers. And they would tell the
4 arrestee that if you cooperates, if you can provide
5 information to help us get a major drug supplier, to help
6 us in other investigations, then we will reduce the
7 charges, we'll reduce them to a summary level, and we will
8 not process you in the meantime, and therefore, you will
9 end up not having a criminal record.

10 Well, obviously that is not the way the system is
11 designed to be run and that is a situation that we have
12 corrected. In Montgomery County, any person who has been
13 charged criminally and wants to cooperate now has to be
14 proffered through our District Attorney's Office. They
15 have to be part and parcel of that. And that will also
16 help out with that.

17 I've talked to my drug guys about this. None of
18 them think this is going to have a negative impact on our
19 operation, that we'll be able to survive just fine. We'll
20 still be able to get people to cooperate. It's just that
21 we will not do this at the cost of processing them. The
22 way that should be handled is the disposition, charges
23 withdrawn, nolle prossed, should appear in a disposition on
24 their criminal history and not that they were never
25 processed to begin with.

1 Another step that we're doing and part of the
2 problem with the police department is that we have a
3 tendency to want to move on to the next thing, and
4 sometimes we arrest people and we're ready to move on to
5 the next job rather than finishing up this one. And we
6 release these people on criminal summonses, they have good
7 identification, we know who they are, so we'll be able to
8 find them again and we say, okay, you'll receive a criminal
9 summons in the mail, rather than taking them back, having
10 them processed, and then releasing them to have a criminal
11 summons issued.

12 And I would venture to say that the reason that
13 Philadelphia has such a high compliance rate with this,
14 like 100 percent, is because they don't release anybody on
15 the street. Everybody goes back to the district, they all
16 get processed, and then they get a criminal summons if
17 that's the way it's going to proceed.

18 We have a large regional shopping mall, Willow
19 Grove Park Mall. It generates a lot of activity up there.
20 And one of the steps that we have taken is we have trained
21 our mall patrol officer, a full-time officer that's funded
22 by the Willow Grove Park Mall, to take fingerprints.

23 Taking fingerprints is not as easy as it looks,
24 taking good, classifiable fingerprints in particular. And
25 it's not as easy as saying, well, every police officer

1 should be trained to do it, because if you're not doing
2 this on a regular basis, if you're doing it every six
3 months, you're going to have a problem with it. So what we
4 have done is we've trained all of our detectives, we've
5 trained this officer, a couple other key officers to try to
6 make sure that we always have somebody available that can
7 get these things done.

8 Another problem that relates to the police is
9 that we have in many cases said we were too busy to process
10 when something comes in. Somebody comes in, as required by
11 their fingerprint order card, and they show up at our place
12 and they want to be processed and they said, well,
13 detectives are out on a burglary now or they're doing this
14 or that; you'll have to come back another time. We know
15 that if they leave, they're probably not going to come back
16 and that will be one that we have a failure on as well.

17 So what we have done to correct this is, first of
18 all, it's a personnel internal thing, a procedural step
19 rather. But we've also talked to our District Courts about
20 this. And on those fingerprint order cards, they are
21 putting down that they can show up for fingerprinting
22 between 8:30 a.m. and 8:30 p.m. Monday through Friday and
23 we will pretty much guarantee that they will be promptly
24 processed. We'll bring additional people in or whatever we
25 have to do. I won't say 100 percent guarantee that we'll

1 always be able to do that. There'll be that time that
2 absolutely when we can't, but in almost all cases, we will
3 get those fingerprints taken and get them done in fairly
4 short order.

5 We also will attempt to process people that show
6 up at other times, so if they come in on the weekends or
7 they come in after 8:30 in the evening, we'll attempt to
8 get them done but we're pretty much guaranteeing those
9 hours. And I think those steps will probably have a
10 positive impact on our failure rate if you will.

11 Now, while our experience may not relate directly
12 to other jurisdictions, certain of these principles I think
13 do apply. And, first of all, making sure that persons
14 charged by criminal summons, that's everybody's
15 responsibility. As indicated before, that's not just the
16 police; that's not just the courts. We need to work
17 together cooperatively to make sure that this occurs.

18 And the second thing is of course that the police
19 in general should never use criminal processing as part of
20 a negotiating bargaining process. If they were arrested
21 for a charge that requires processing, it should be done
22 and then we deal with that outside that process.

23 So I don't think we're ever going to be perfect
24 in regards to this process but we can and we must do
25 better. I think by adopting the changes that I've talked

1 about here this morning, I know that we're going to improve
2 our rate. I think certain ones of these changes, certain
3 parts of this might be applicable to other agencies
4 throughout the Commonwealth as well.

5 So thank you very much.

6 MAJORITY CHAIRMAN MARSICO: Well, thank you.

7 Perhaps we should use you as a model for the other police
8 departments and courts around the State because you
9 certainly should be commended for what you've done and the
10 things that you've done to make it better, your compliance
11 rate. This is been very helpful. You're taking a very
12 proactive approach and you're certainly appreciated by the
13 Committee and I'm sure by the citizens of your county as
14 well.

15 Have you heard anything from any other police
16 departments within your county regarding this, the approach
17 that you've taken, your model?

18 DEPUTY CHIEF LIVINGOOD: I've had some brief
19 discussions with some of the other agencies surrounding us.
20 They're all concerned. They're kind of taking a wait-and-
21 see approach to the whole thing, and we're certainly going
22 to share what we have learned and what we are doing with
23 all of them.

24 MAJORITY CHAIRMAN MARSICO: Okay. Questions,
25 comments?

1 Well, seeing none, thank you very much, John. I
2 appreciate you being here, your testimony, and for what you
3 are doing. Thank you.

4 DEPUTY CHIEF LIVINGOOD: Thank you.

5 MAJORITY CHAIRMAN MARSICO: The next testifier is
6 the Honorable Thomas G. Miller, Magisterial District Judge,
7 Allegheny County, Special Court Judges Association of
8 Pennsylvania, who is now the President of the Special Court
9 Judges. Welcome.

10 JUDGE MILLER: Thank you, Mr. Chairman, Members
11 of the Committee, for the opportunity to be here today.

12 You have some information in the packets that I
13 prepared for you and I know the Chief had referred to the
14 fingerprint order. There's a copy of that in there also
15 that we issue. It's a statewide form.

16 I know that people from Pennsylvania Commission
17 on Crime and Delinquency and the Chief mentioned about
18 fingerprinting is a law enforcement function. The courts
19 do get involved in certain circumstances when charges are
20 filed by summons.

21 We have 67 counties in Pennsylvania. There are
22 probably 67 different ways of doing things. We are
23 fortunate in Allegheny County for the most part. We have a
24 24-hour Arraignment Court. Anybody who is taken to the
25 Arraignment Court gets printed. However, someone who is

1 taken during daylight hours to the local District Court and
2 arraigned, if they are released, they are given a
3 fingerprint order. If the charges are filed by summons,
4 they are sent out a fingerprint order.

5 The problem is in Allegheny County with the
6 county so large we issue those fingerprint orders by
7 appointment. A lot of times, and depending how busy it is,
8 you can't get an appointment from four to six weeks. Their
9 preliminary hearing is scheduled prior to that occurring.
10 Now, on some things we have to postpone the hearings
11 because you need those results of the fingerprints to
12 proceed. On a case of retail theft, you have to know if
13 they've had any priors, things like that, because it
14 depends on the grading.

15 But in some cases they haven't been printed yet
16 but you have the prosecution ready to proceed, you have the
17 defendant there, you have witnesses there, you have defense
18 counsel, and instead of postponing it for everybody and
19 especially your victims and your witnesses and making them
20 come back another time because the person is not printed,
21 it's just easier to proceed with the case and dispose of
22 it.

23 A lot of times on certain things in Allegheny
24 County if you are charged with possession of drug
25 paraphernalia, 99 percent of the time that is going to be

1 worked out at a preliminary hearing and they're probably
2 going to plead to summary disorderly conduct. They haven't
3 been printed on it. And there are cases where somebody
4 would probably be charged with that 10 times and it's going
5 to be worked out 10 times because the DA's Office doesn't
6 find it worth it to proceed to prosecute that in the Court
7 of Common Pleas, but there is going to be no record of it.
8 Once the case is disposed of in our office, we have no
9 jurisdiction on it anymore.

10 And even in cases where the hearing is being held
11 after their fingerprint date, unless the District
12 Attorney's Office or law enforcement check to see if they
13 complied, most of the time we have no idea if they appeared
14 for their fingerprinting order or not. We don't get notice
15 of it. And, too, if they don't, there's no statute to
16 provide that they can be arrested for it. I know the Chief
17 mentioned about going to their District Courts and asking
18 for a warrant. If it's made a condition of the bond,
19 that's the only reason you'd get a warrant, that they
20 didn't comply with their conditions of the bond and it has
21 to be filed on motion of the District Attorney or the
22 arresting officer at the time.

23 Some people take the position that you could
24 proceed with a contempt hearing. You can maybe say, hey,
25 go, we're going to find you in contempt and you're going to

1 get another \$100 fine. Some of the people, no.

2 Also, I mean just the way things work out in
3 Allegheny County if they're charged with certain things
4 that the defense counsel knows is going to be worked out,
5 the defense counsel tells them don't show up for your
6 fingerprinting date; we're going to work it out at the
7 hearing and it's going to keep you from having to go and
8 get the charges expunged later on.

9 The Chief is very fortunate. He has a very large
10 department, a 96-man department. With the exception of the
11 City of Pittsburgh Police Department, I don't think we have
12 any departments in Allegheny County that have that many
13 officers.

14 Representative Costa, Penn Hills I don't think
15 even has that large of a department. They are all
16 dependent on Allegheny County to do their fingerprinting
17 for them.

18 The problem is you have a lot of part-time
19 departments that have maybe one officer working. For them
20 to leave and especially if you're in outlying areas of the
21 county and then have to drive an hour into the city, drop a
22 person off to get processed, and then you have to drive
23 back, you're taking the only officer in town off the street
24 for hours.

25 Allegheny County at one time used a regional

1 arraignment center where they had four different regional
2 arraignment centers throughout the county, but because of
3 cost, they were eliminated. And I don't know whatever
4 happened to that equipment. That would be great if some of
5 the larger departments could have gotten that equipment.
6 But it might be sitting in a basement somewhere. You don't
7 know whatever happened to it. But I'm sure they invested a
8 lot of money in that equipment. It's a shame that it's not
9 being put to use.

10 But in a lot of counties, and I'm sure a lot of
11 your areas are the same, you have a lot of small police
12 departments. You have guys that can't take time off the
13 street to drive an hour or so to get somebody
14 fingerprinted. If something could be set up where you have
15 the regional centers like we had where it was close for
16 them to go where they can drop somebody off, it was a great
17 system. However, the funding -- and they did charge a fee.
18 I don't think anyone ever waited long enough because it's
19 going to take a couple years for that money to catch up by
20 the time the person goes through to trial, they're
21 convicted and they start paying back their court costs. I
22 think the estimate was that if they collected 33 percent of
23 the cost, it would fund the system. But it never got that
24 far. The county decided not to fund it anymore.

25 What's the answer? One, I think we have to set

1 up guidelines that everybody -- instead of having 67 ways
2 to do something, set up one procedure within the criminal
3 justice system where here is how we're going to do it.
4 That's hard to do with 67 counties. I think we have to
5 make Live Scan equipment available to police departments in
6 a reasonable area and train officers on how to do it where
7 they can go in, they could take the defendant in, they
8 could Live Scan them and release them. If they do that
9 while they have them in custody, then you don't have to
10 worry about those fingerprint orders and are they going to
11 show up or not.

12 And especially in the larger counties with these
13 fingerprint orders where they're going through a central
14 thing, a lot of times that's a burden on people. They
15 don't have transportation and they have great hours. They
16 fingerprint in Allegheny County from 7:00 in the morning
17 until 10:30 in the evening, but people are coming and
18 they're coming from outside the area, they're coming from
19 Westmoreland County, they're coming from Indiana County,
20 they're coming from Washington County. It's a trip into
21 the city to do it. And if they don't show up and the
22 police say, well, they weren't fingerprinted, well, you had
23 them in custody. You had them there and you knew you're
24 going to charge them. Fingerprint them then even if you're
25 going to proceed by summons against them. But you have to

1 make it available and have the equipment available where
2 it's not a burden on the police departments and on the
3 community.

4 I'm sure you all deal with the local borough
5 council people. You can pass a rule saying everybody has
6 to be fingerprinted and now you have to call on a guy on
7 overtime four or five times a week because your officer is
8 leaving to go into Pittsburgh to get them done. They're
9 going to be knocking on your door saying who's going to pay
10 for this? That's reality at times.

11 There are exceptions, you know, a person is too
12 intoxicated to fingerprint, they needed medical attention,
13 things like that, those are things that can be dealt with
14 but I think the idea is to make the equipment affordable,
15 make it so police departments can get it.

16 Chief, your department, that's great. They tell
17 the people you go to your local police department, which I
18 think you said your area is 15 square miles. You tell
19 somebody they have to make a 110-mile round-trip to get
20 printed, it becomes a burden.

21 And we have some problems with that also which
22 deals with our local BCI people. Somebody has an
23 appointment for 10:00 and they get there 5 after 10:00,
24 they'll say you're late; we're not going to do you. Call
25 the court and reschedule, which means four weeks down the

1 road you're postponed for them to get another fingerprint
2 order. And that's a local issue that we have to deal with.
3 I mean if they're there, print them. They're five minutes
4 late. Some of them take a bus in. You can't depend on
5 public transportation to be prompt all the time, but you
6 have them there, even if they have to wait a little bit and
7 you have them there and you get them done. You're not
8 taking up time later on.

9 Questions?

10 MAJORITY CHAIRMAN MARSICO: Representative Costa.

11 REPRESENTATIVE COSTA: Thank you, Mr. Chairman.

12 Not so much a question but as a comment, thank you, Judge,
13 it's always good to see you. And thank you for your
14 service to Allegheny County. You do a superb job.

15 I totally agree with you. You hit it right on
16 the head that we need uniformity, number one, with our
17 county. If you can buy a hamburger at McDonald's here and
18 you can buy one in China and they taste the same, why can't
19 we do that in Pennsylvania? It's ridiculous. I mean we
20 should be able to do this and put it all together. And I
21 agree with you.

22 If we don't fingerprint them when we have them,
23 chances are we're not going to. And you're right. I've
24 heard the attorneys in many cases, defense attorneys, say
25 don't worry about it, don't go down for your prints because

1 we're going to work a deal out. And then they walk away
2 and we don't know what we have them on. So someday,
3 somehow we have to -- I mean I don't know if we can blame
4 ourselves or whatever but we have to look at a way of
5 saying to the officers you're going to take them to a
6 central area, you're going to fingerprint them while you
7 have them in custody, and then you can release them because
8 you'd be surprised to many times you get a hit when you
9 fingerprint them and you got somebody that's wanted in
10 another State.

11 So I think it's imperative that we go back to the
12 system just for safety issues, number one. It's good for
13 the records but for safety issues, number one, to get these
14 people off the streets that we're letting go and we never
15 see them again sometimes.

16 So again, Judge, thank you very much for your
17 service.

18 JUDGE MILLER: And in response, you do; sometimes
19 you get lucky, you get a hit. And it's the person
20 sometimes, and fortunately it hasn't happened that I'm
21 aware of, but at some point down the road it's liable to
22 occur where you have the person who's wanted for rape or
23 robbery out of State or some other jurisdiction that you
24 had there, and because nobody took the incentive to
25 fingerprint them, they're going to be let go.

1 One of my colleagues just recently said -- he is
2 from State College, Pennsylvania -- they had some type of
3 big festival up there and he said four people got arrested
4 for retail theft. They were from out of State, but because
5 the police department was busy, it was a busy weekend there
6 or they just didn't want to be bothered with it, they let
7 them go and said we'll file by summons; send them a
8 fingerprint order. If you're in New York and have no
9 reason to come back to State College after you got
10 arrested, are you going to come back to get fingerprinted?
11 No. And we're not going to go to New York to extradite
12 them on a retail theft charge.

13 REPRESENTATIVE COSTA: Well, like you said, Your
14 Honor, basically district judges, they don't have contempt
15 powers, am I correct?

16 JUDGE MILLER: We have limited contempt powers.

17 REPRESENTATIVE COSTA: Would you be able to order
18 someone back---

19 JUDGE MILLER: No.

20 REPRESENTATIVE COSTA: ---to get fingerprinted?
21 Then, if nothing else, we have to correct that.

22 JUDGE MILLER: On like the retail theft thing,
23 you're going to issue a warrant for them for failure to
24 appear, okay, or failure to respond to the charge, but
25 they're in New York. We're not going to send anybody to

1 get them.

2 REPRESENTATIVE COSTA: I agree with you.

3 JUDGE MILLER: And if they're stopped up there
4 and they say, hey, you have a warrant for your arrest out
5 of Pennsylvania, is the DA or the sheriff going to send
6 somebody up there and spent all that money for a retail
7 theft charge? No.

8 REPRESENTATIVE COSTA: Thank you, Your Honor.
9 Thank you, Mr. Chairman.

10 MAJORITY CHAIRMAN MARSICO: Representative Regan.

11 REPRESENTATIVE REGAN: Thank you, Judge, for
12 being here.

13 I'm gathering from your testimony and also the
14 testimony of Deputy Chief Livingood that perhaps an answer
15 to this is to make a law that says if you're issued a
16 summons with a fingerprint order, if you don't comply with
17 that, you'll be arrested.

18 JUDGE MILLER: That would put some teeth to it.

19 REPRESENTATIVE REGAN: What would it do to
20 manpower constraints throughout law enforcement in
21 Allegheny County?

22 JUDGE MILLER: A lot of those types of warrants
23 are usually handled by constables in the area, so as far as
24 actual law enforcement, that's probably not going to affect
25 their manpower on that a whole lot. It also gives them

1 something else to go by. They have somebody that has not
2 complied with the summons request gives them a reason to go
3 get them.

4 REPRESENTATIVE REGAN: And wouldn't it also---

5 JUDGE MILLER: But I think it's easier when you
6 had them, fingerprint them then.

7 REPRESENTATIVE REGAN: Yes. Obviously, that
8 would be the first thing. But in the event that the system
9 stays the way it is and they're ordered to get fingerprints
10 and they may have their attorney there saying don't show up
11 to be fingerprinted, I think the fact that it was a crime
12 not to would certainly eliminate that aspect.

13 JUDGE MILLER: Oh, sure. Yes. And that would
14 prevent that from occurring I believe also.

15 REPRESENTATIVE REGAN: Right.

16 JUDGE MILLER: Yes. And the problem is a lot of
17 times once the case leaves our court, we no longer have
18 jurisdiction on it anymore. So they don't get
19 fingerprinted, they came in and waived the case, their
20 fingerprint appointment isn't for three weeks, they don't
21 show up, the case is already in the Court of Common Pleas.
22 If the District Attorney does not catch that at formal
23 arraignment or a trial, then nothing's going to appear.
24 And it happens if they don't catch that they've been
25 fingerprinted. That's not high on the list of them to

1 check when they're going through their trial preparation.

2 REPRESENTATIVE REGAN: Yes. Thank you, Your
3 Honor. I appreciate you being here.

4 MAJORITY CHAIRMAN MARSICO: Well, Your Honor,
5 thank you very much. And we certainly agree with the fact
6 that we need a guideline statewide and we'll ask the courts
7 to consider that as well. I know they're going to be
8 testifying next and we'll see what they have to say about
9 that.

10 But we appreciate your testimony and thank you
11 very much for being here.

12 JUDGE MILLER: Okay. Thank you. Thanks for the
13 opportunity.

14 MAJORITY CHAIRMAN MARSICO: Next to testify is
15 David Price, Esquire, Administrative Office of Pennsylvania
16 Courts, AOPC. Welcome, David.

17 MR. PRICE: Thank you. Good afternoon, everyone.

18 I'm David Price. I am a staff attorney with the
19 Administrative Office of Pennsylvania Courts. I am pleased
20 to be here.

21 Since 2012, the Administrative Office of
22 Pennsylvania Courts has been providing information and
23 assistance to PCCD's Fingerprint Compliance Workgroup as it
24 studies offender identification fingerprinting performance
25 in the Commonwealth. While it is statutorily the

1 responsibility of the arresting agency to take and submit
2 to the Pennsylvania State Police Central Repository the
3 fingerprints of all persons arrested in certain crimes,
4 there are a few occasions when a court is required to order
5 that an individual be fingerprinted.

6 Even in these limited instances, the role of the
7 court is to order that the defendant be fingerprinted. The
8 actual fingerprinting process is still performed by law
9 enforcement personnel who take and submit the fingerprints
10 to the Pennsylvania State Police Central Repository. My
11 comments will focus on when a court is required to issue a
12 fingerprint order.

13 As has already been discussed, probably the
14 fingerprint orders are mostly issued by Magisterial
15 District Courts in regards to summons cases, so when a case
16 is initiated by a summons. In these cases the court is
17 statutorily required to order the defendant to submit
18 within five days for fingerprinting by the municipal police
19 of the jurisdiction in which the offense was allegedly
20 committed, or in the absence of a police department, the
21 Pennsylvania State Police.

22 The reason for this requirement could be that
23 defendants do not undergo in a summons case the same type
24 of identification processing that occurs in an arrest case
25 because a defendant is not in custody and no preliminary

1 arraignment is held. Therefore, the first occasion in
2 which the defendant comes before an issuing authority is
3 usually at the preliminary hearing.

4 To fill this requirement, the courts, such as the
5 Magisterial District Courts, attach a fingerprint order
6 that's already been prescribed which is produced by the
7 AOPC's Magisterial District Court computer system to the
8 summons form, which is sent to the defendant pursuant to
9 Rule 510 of the Rules of Criminal Procedure. The
10 fingerprint order, as has been described, sets forth the
11 time, date, and location that the person shall appear
12 before law enforcement personnel to have his or her
13 fingerprints taken.

14 There are instances where fingerprint orders
15 should not be issued in a summons case. For instance, if
16 the defendant's fingerprints were already obtained by the
17 arresting agency prior to the case being filed by the
18 court, no order is necessary. Another exception would be
19 when a case is initiated by a private criminal complaint.
20 Statutorily, in those cases fingerprints should only be
21 taken upon conviction of the defendant, remembering that a
22 private criminal complaint is a complaint initiated by an
23 individual who is not a law enforcement officer.

24 Rule 504 of the Rules of Criminal Procedure
25 provide that the police alert court as to whether the

1 defendant's fingerprints have been taken by answering a
2 fingerprint yes/no question on the criminal complaint form.
3 Thus, when the criminal complaint form is filed with the
4 court, which is filed before the summons is issued, the
5 court staff will know whether the fingerprint order must be
6 prepared.

7 Now, Representative Regan and Costa and other
8 folks here testifying have been talking about how are these
9 fingerprint orders enforced in a summons case while the
10 Rules of Criminal Procedure set forth the enforcement
11 mechanisms? Specifically, Rule 543(c) provides if a
12 defendant fails to comply with the fingerprint order, the
13 primary mechanism to enforce the order is making compliance
14 of it a bail condition following the preliminary hearing.
15 The issuing authority who conducted the preliminary hearing
16 is required to send notice of the defendant's noncompliance
17 to the Court of Common Pleas. This notification is
18 provided in the docket transcript form, which is produced
19 by the Magisterial District Court and sent to the Court of
20 Common Pleas pursuant to Rule 135 of the Rules of Criminal
21 Procedure. These docket transcript forms are also provided
22 to the District Attorney's office by the courts so the
23 District Attorney's Office would be on notice whether or
24 not the defendant's fingerprints have been taken.

25 Also, what's been noticed, and I think

1 Representative Regan had brought this up, is whether there
2 could be a statutory remedy in addition to these
3 enforcement techniques. The Magisterial District Justices'
4 contempt powers are set forth in Title 42, Section 4137.
5 Currently, those contempt powers do not allow a Magisterial
6 District Court to hold the person in contempt for failing
7 to comply with a fingerprint order. In 2010 when the
8 Criminal Procedures Rules Committee looked at this issue at
9 the behest of a county who was having problems with this,
10 the Rules Committee I believe had opined that being that
11 there is a statute in place for the DJ contempt powers, the
12 appropriate remedy would be to amend those contempt powers
13 so DJs could issue orders that perhaps would provide
14 another enforcement technique.

15 I would also note with summons cases that AOPC
16 did look at compliance in summons cases in the last
17 quarter, so when you look at the information that we
18 provide to PCCD about fingerprinting, we break it up by
19 quarters. So when we looked at the fingerprint orders that
20 were issued or the summons cases that began from January
21 1st this year and ended on March 31st of this year, we
22 found in those cases that there was either fingerprints
23 taken or a fingerprint order issued in 96.5 percent of
24 those cases. So at least that snapshot didn't lead us to
25 believe that summonses were a driving force behind this

1 issue.

2 As I alluded to, there are other instances
3 wherein a fingerprint order shall be issued by the court.
4 The second is when a defendant is convicted of a felony or
5 misdemeanor offense that was charged in a private criminal
6 complaint that I referenced earlier. The statute again
7 provides that the court shall order the defendant to
8 submit within five days for fingerprinting by the municipal
9 police of the jurisdiction in which the offense was
10 allegedly committed, or in the absence of a police
11 department, the Pennsylvania State Police.

12 A third is retail theft. The retail theft
13 statute, Title 18, Section 3929, provides that prior to the
14 commencement of a trial or entry of a guilty plea of a
15 defendant 16 years or older who is accused of the summary
16 offense of retail theft, the court shall order the
17 defendant to submit to fingerprinting within five days by
18 the municipal police of the jurisdiction in which the
19 offense was allegedly committed or the Pennsylvania State
20 Police. The fingerprints are then forwarded to the
21 Pennsylvania State Police to determine whether the
22 defendant has any prior convictions for retail theft.

23 The court shall not proceed with trial or entry
24 of guilty plea until this information is provided. The
25 defendant's prior conviction information is necessary to

1 determine the appropriate grade for retail theft offense,
2 because as we know, a first offense is a summary but
3 subsequent offenses are no longer summaries but go up the
4 scale.

5 A fourth instance is library theft. Title 18,
6 Section 3929.1, provides that when a defendant is convicted
7 of library theft, the court shall order the defendant to
8 submit within five days for fingerprinting by the
9 municipality in which the offense was committed or the
10 Pennsylvania State Police.

11 With regard to the information that AOPC provides
12 to the working group, a high-level summary is we provide a
13 fingerprint report that is generated which consists of a
14 list of cases that were disposed by the Magisterial
15 District Courts and that includes an offense which requires
16 a defendant's fingerprints to be acquired. This would
17 include cases that had been held for court but may not yet
18 have been disposed at the Court of Common Pleas level. The
19 candidate cases are then matched to a list of fingerprints
20 as reported by the Pennsylvania State Police.

21 I would also just note in some of the other
22 testimony given earlier there was a reference to the
23 Philadelphia protocols. It's important to note that AOPC
24 and the 1st Judicial District continue discussions with
25 regard to the Philadelphia protocols because there is the

1 belief that those protocols are not as responsive to the
2 Rules of Criminal Procedures as other protocols in other
3 States. So I would just add that as a caveat.

4 There was also a suggestion of a bright line test
5 perhaps providing that criminal cases could not proceed
6 past a certain point such as may be formal arraignment if
7 fingerprints have not been taken. Since we believe
8 fingerprints is an executive branch function, perhaps
9 rather than limiting the court's ability to effectively
10 adjudicate cases, perhaps that such a bright line should be
11 put on the District Attorney's Office that they would not
12 file a bill of information in the matter or they would not
13 prosecute the matter until the fingerprints have been
14 taken. Given that they have an executive function, there
15 may be a better nexus to limiting their functions.

16 As I think Mark Bergstrom noted, telling a court
17 that they cannot proceed with a case until something
18 happens has a lot of practical considerations. What do you
19 do if the defendant wants to plead guilty and start paying
20 restitution to the crime victim? Does this mean that
21 pretrial discovery cannot occur? Does this mean that
22 literally the case just sits there until the fingerprints
23 are taken? Who should take the fingerprints? Should we
24 merely send the person down to the sheriff's office and
25 have them fingerprinted right away? Does the sheriff's

1 office have the Live Scan equipment? Do they have the
2 personnel? So I would caution that stopping at a bright
3 line from a court proceeding in a case has a lot of issues
4 that may need to be discussed.

5 And I think there is also some discussions about
6 OTNs as well, and I know it was pointed out earlier the
7 importance of OTNs, and one of the issues that we have are
8 sometimes duplicate OTNs. The criminal complaint form, in
9 addition to having a box that asks you whether or not the
10 defendant has been fingerprinted, also has a place for you
11 to enter the OTN number that was given if the defendant was
12 fingerprinted.

13 So if they went to a Live Scan machine and
14 they're fingerprinted, the Live Scan machine creates the
15 OTN number. If the police officer puts the OTN number on
16 the criminal complaint form, then when the court staff is
17 inputting that information into the MDJS system, the court
18 staff does not create a new OTN number; they merely put in
19 the number that's on the criminal complaint form. If for
20 some reason the defendant has been fingerprinted and that
21 number is not on the form and the court staff is not aware
22 that the defendant has been fingerprinted, the court staff
23 then will create a brand-new OTN number and then hence now
24 we have two OTN numbers for the same case.

25 Now, the MDJS system does have the capability to

1 capture more than one OTN number, so, for example, if the
2 court staff created an OTN number and then the person was
3 Live Scanned after the case was created and by mistake a
4 second OTN number was created, if that information is
5 reported to the staff, the staff can record both OTN
6 numbers on the case and both those numbers would be
7 reported to the Pennsylvania State Police. There would
8 have to be matching available but at least you would know
9 that there's more than one per case.

10 Typically, the problems with OTNs occur in that
11 scenario where the court has created it, the fingerprint
12 has been taken later, and by mistake a second OTN was
13 created because nobody knew or transmitted that the court
14 already created an OTN to begin with. Of course, there can
15 also be staff errors. Perhaps the MDJS staff member just
16 did not notice on the criminal complaint form an OTN number
17 was there. Perhaps the law enforcement officer just forgot
18 to put it there.

19 While the courts are not involved in the actual
20 taking of fingerprints, their submission of fingerprints to
21 the Pennsylvania State Police Central Repository, we are
22 pleased to assist the Fingerprint Compliance Group with
23 this important endeavor and I thank you for your time and
24 am available for questions.

25 MAJORITY CHAIRMAN MARSICO: Representative Regan,

1 question?

2 REPRESENTATIVE REGAN: Yes, sir. Thanks.

3 As it relates to the courts, and I am more
4 familiar with the Federal system, but I'm assuming there's
5 a lot of similarities in the calculation of a guideline
6 computation to go to a judge for sentencing purposes,
7 correct?

8 MR. PRICE: Yes.

9 REPRESENTATIVE REGAN: So part of that
10 computation is prior history, prior arrests I would
11 imagine?

12 MR. PRICE: Yes.

13 REPRESENTATIVE REGAN: So there is every
14 possibility that with this lack of reporting that we're
15 finding out about here today that people could be receiving
16 sentences which are lesser than what are deserved based on
17 the court not having an accurate picture of a background or
18 history, correct?

19 MR. PRICE: Correct.

20 REPRESENTATIVE REGAN: Okay. Thank you.

21 MAJORITY CHAIRMAN MARSICO: Any other questions?

22 The previous testifier, Judge Miller, suggested
23 the courts develop a protocol or guidelines for each county
24 or each police department and magistrates throughout the
25 State. Will the Procedural Rules Committee consider that

1 in your opinion?

2 MR. PRICE: Well, I know the Rules Committee --
3 and I think it was referenced in the PCCD comments earlier
4 -- back in 2008 the Rules Committee created this summons
5 fingerprint structure that I basically described today when
6 it was alerted to them that there were problems with
7 fingerprinting. And I believe that if further problems
8 were shown to the Committee, I certainly can't speak to
9 them---

10 MAJORITY CHAIRMAN MARSICO: Right. I understand.

11 MR. PRICE: ---but I believe that they would
12 certainly look into those matters and see if the rules
13 could be changed any to help. I just know that up into
14 this point no one has contacted the Rules Committee that
15 I'm aware of---

16 MAJORITY CHAIRMAN MARSICO: Okay.

17 MR. PRICE: ---to suggest that the criminal rules
18 should be tightened.

19 MAJORITY CHAIRMAN MARSICO: And perhaps the
20 Committee would do that in the future. We'll do that. So
21 we'll discuss that and perhaps send a letter to the courts
22 to consider a protocol, perhaps even a mandate to do that.
23 Okay.

24 Well, thank you very much. I don't have anything
25 else at this point. I appreciate your testimony here and

1 your expertise. Thank you.

2 MR. PRICE: Thank you, everyone.

3 MAJORITY CHAIRMAN MARSICO: The next testifier is
4 Lieutenant Colonel Scott Snyder, Lieutenant Kevin
5 Deskiewicz.

6 LIEUTENANT DESKIEWICZ: That's correct.

7 MAJORITY CHAIRMAN MARSICO: Is that right?

8 LIEUTENANT DESKIEWICZ: Yes.

9 MAJORITY CHAIRMAN MARSICO: Good. From the
10 Pennsylvania State Police. Welcome, and you may begin.

11 LIEUTENANT COLONEL SNYDER: Thank you very much.
12 Good morning, Chairman Marsico and Members of the
13 Committee. Thank you very much for the opportunity to
14 testify and appear before you on this very important topic.

15 Again, my name is Lieutenant Colonel Scott
16 Snyder. I'm the Deputy Commissioner of Staff for the
17 Pennsylvania State Police. And Lieutenant Kevin Deskiewicz
18 is the Director of Our Criminal Records and Identification
19 Division.

20 I'll try not to reiterate too much of what
21 already has been said but I do want to emphasize some of
22 the issues that have been discussed so far. Certainly, the
23 importance of accurate and complete criminal history
24 records cannot be overstated. They are critical to
25 tactical and strategic decision-making at virtually every

1 juncture in a criminal justice system and beyond. We
2 talked about the importance of accurate criminal history
3 records for police officers, prosecutors, judiciary,
4 criminal justice entities, but additionally, the criminal
5 history records are increasingly used for non-criminal
6 justice purposes, including important reasons such as
7 background checks for employment, volunteer programs,
8 licensing, adoption, citizenship, and of course firearms
9 purchases.

10 The process of fingerprinting a suspected
11 criminal is the single-most important step in establishing
12 and updating a person's criminal history record. It
13 functions to properly identify a suspect as well. And if I
14 can expand on that, if a police officer has an individual
15 and they are uncertain of their identity, if they're able,
16 they can take them to a Live Scan machine, acquire their
17 fingerprints, and compare them against the criminal history
18 records that exist in our automated fingerprint
19 identification system. If the person has been arrested
20 previously, it will come back and verify that person's
21 identity. Fingerprints are really the only true way to
22 conclusively verify an individual's identity.

23 In addition, if police recover a latent print at
24 a crime scene, that latent print is also submitted to AFIS
25 and compared against the criminal history record database

1 that exists.

2 So a criminal history record is initiated of
3 course upon the arrest and submission of fingerprints to
4 the Pennsylvania State Police Central Repository. And a
5 record of an arrest, as we know, is not created without
6 submission of fingerprints related to that arrest. And of
7 course Pennsylvania law provides that the arresting
8 authority take fingerprints of all persons arrested for a
9 felony, all misdemeanors, and certain summary offenses.
10 There are no exceptions to the law and the law is nothing
11 new. Pennsylvania has had a statute requiring
12 fingerprinting at the time of arrest since 1927.

13 Ideally, of course, the arresting officer should
14 always ensure that the accused is fingerprinted prior to
15 being released from custody or the preliminary arraignment.
16 Timely submission of these fingerprint cards is of course a
17 statutory requirement which requires the arresting
18 authority, within 48 hours of the arrest, to forward
19 fingerprints to the Central Repository.

20 Of course there are times when complying with
21 this mandate is not practical such as when dealing with a
22 combative, injured, or incapacitated suspect. If the
23 accused is unable to be fingerprinted at the time of the
24 arrest, then it's the officer's responsibility at the time
25 the complaint is filed to request the issuing authority to

1 direct the defendant to submit for fingerprinting.

2 The court also has some responsibilities to
3 direct the defendant for fingerprinting when the case is
4 proceeded against the defendant by summons, which happens
5 quite frequently. And also, as we discussed, private
6 complaints which result in convictions of felony or
7 misdemeanors, the court needs to ensure fingerprint orders
8 are ordered -- and summary retail theft and library theft.

9 Legal requirements, and we haven't talked about
10 the legal requirements surrounding the fingerprinting of
11 juveniles; those are bit more nuanced. Law enforcement has
12 the authority to take or cause to be taken fingerprints of
13 any child alleged to have committed a misdemeanor or a
14 felony but they are not required to take fingerprints until
15 the child is adjudicated a delinquent or the case is
16 transferred for criminal prosecution. Then they're
17 required to ensure that the defendant's fingerprints are
18 taken and forwarded to the Central Repository.

19 And as discussed, police officers in Pennsylvania
20 employ two methods of taking the arrested person's
21 fingerprints, manual inking or the preferred method of
22 electronic Live Scan. Presently, there are 309 Live Scan
23 devices deployed throughout the State. In April of 2012
24 the FBI stopped accepting inked fingerprint cards. But
25 irrespective of this, our Central Repository still accepts

1 the inked fingerprint cards from agencies that do not have
2 access to a Live Scan device.

3 Once received, the inked fingerprint card is
4 electronically scanned and the demographic data is manually
5 keyed in. If the prints are not rolled properly, they may
6 be returned to the originating law enforcement agency as
7 unacceptable. If the print card is returned, it is
8 incumbent upon the agency to reprint the offender. This
9 can cause delay in the suspect's positive identification
10 for several weeks.

11 The amount of ink carts processed by the Central
12 Repository fluctuates between 4 and 8 percent of all
13 criminal fingerprint submissions. We average about 26,000
14 inked fingerprint cards a year. In 2013 the total
15 fingerprint submissions processed by our Central Repository
16 exceeded 800,000 but nearly 400,000 of them were criminal-
17 related.

18 Historically, and despite legal requirements,
19 many persons are not being fingerprinted as required. And
20 as you've heard, various Pennsylvania agencies have been
21 engaged in a comprehensive project aimed at improving
22 Pennsylvania's criminal history records to include
23 assessing why fingerprints aren't being taken as required.
24 And the PCCD of course formed the Fingerprints Compliance
25 Group consisting of various agencies which have worked hard

1 to address the issue.

2 In 2006 the Commonwealth's statewide compliance
3 rate was determined to be approximately 67 percent. Since
4 that time, the PCCD Fingerprint Compliance Workgroup has
5 identified changes needed to increase the compliance rate.
6 A renewed emphasis on police education, training, and
7 awareness was determined to be essential if compliance
8 rates were to improve. Other actions suggested included
9 the use of centralized booking centers when applicable and
10 the procurement of additional Live Scan machines for
11 deployment in the field. Moreover, increased coordination
12 and cooperation between law enforcement, the courts, and
13 District Attorney's Offices was suggested.

14 Now, over the past several years, many of the
15 recommendations made by the working group have been
16 implemented. PSP has created a detailed fingerprint manual
17 to assist State and local law enforcement agencies by
18 providing guidelines for preparing and properly submitting
19 fingerprint cards whether they are inked or obtained via
20 Live Scan. Emphasis is given on the importance of
21 fingerprinting, its legal requirements, and the consequence
22 of failing to adhere to those requirements.

23 The Municipal Police Officers Education and
24 Training Commission covered the topic of mandatory
25 fingerprinting in legal update training in both 2007 and

1 2013. The subject will again be covered in the MPOETC
2 mandatory in-service training slated for 2015. The
3 Pennsylvania Chiefs of Police Association, through their
4 Virtual Training Network, offers online training courses
5 directly related to the subject of fingerprinting. Two
6 courses, fingerprinting compliance and Live Scan, have been
7 taken by thousands of police officers from jurisdictions
8 throughout the Commonwealth.

9 Finally, PCCD has implemented their web-based
10 digital dashboard that details fingerprint compliance rates
11 throughout the Commonwealth. Both police administrators
12 and district attorneys can glean information that is case-
13 specific through the dashboard in order to identify and
14 correct problem areas that may exist.

15 Now, although the dashboard data appears to
16 provide a fairly accurate view of compliance, there are
17 several issues affecting the rates that can be misleading
18 and some of those were touched upon earlier. The PSP
19 regularly receives dispositions from AOPC for which there
20 is no corresponding criminal record in the Central
21 Repository. This can occur for several reasons. First and
22 most obvious is that a law enforcement agency simply fails
23 to fingerprint an accused subsequent to arrest.

24 Failing to fingerprint may occur for a number of
25 reasons. For example, central booking centers may not be

1 conveniently located or are otherwise not operational. In
2 addition, MDJ may fail to issue the required fingerprint
3 order or a defendant may not comply with an order that has
4 been issued.

5 However, it is important to note that there are
6 situations when the police officer does fingerprint as
7 required, yet the fingerprint card cannot be matched to a
8 disposition, resulting in negatively skewed data. Failures
9 can occur when the data between the Central Repository and
10 AOPC cannot be matched.

11 And it was mentioned earlier one of the most
12 common causes of this issue arises when a duplicate Offense
13 Tracking Number, or OTN, is generated for the same offense.
14 This typically occurs when the arresting authority
15 fingerprints an offender using a Live Scan device prior to
16 filing of charges. In these situations, the Live Scan
17 generates an OTN which is linked to the charges associated
18 with the arrest at the time of the processing. Problems
19 arise if the magistrate issues another OTN for the same
20 offense when the offender appears in court. The judicial
21 OTN is linked to the final disposition.

22 Other matters affecting compliance rates are
23 incomplete or inaccurate information being recorded on the
24 fingerprint cards or submission of inked fingerprint cards
25 to the Central Repository that fail quality thresholds.

1 The key to correcting these shortcomings is making the
2 agencies experiencing the problems aware of their
3 existence. Due to the combined efforts of the Fingerprint
4 Compliance Workgroup, by the end of 2013 the statewide
5 fingerprint compliance rate rose to 87 percent.

6 Notwithstanding this increase, there remains room
7 for improvement. The PSP suggests the following action be
8 considered. First, the sustained emphasis on the
9 importance of mandatory fingerprinting should continue.

10 All criminal justice agencies, not just law
11 enforcement, benefit from ongoing training and education
12 geared toward fingerprinting and its impact on the criminal
13 justice system.

14 Next, changes to the Judicial Code, Crimes Code,
15 and the Pennsylvania Rules of Criminal Procedure should be
16 considered. Perhaps most significantly, changes should be
17 made that would prohibit a case from advancing past a
18 certain point in the criminal justice process if mandatory
19 fingerprinting has not occurred. We recommend this point
20 be formal arraignment.

21 There was some reference earlier to the
22 Philadelphia County process. Philadelphia County can boast
23 a near 100 percent fingerprint compliance rate. It should
24 be looked at as a model for the rest of the Commonwealth.
25 The Philadelphia Municipal Court operates in such a manner

1 that criminal cases cannot proceed into the system unless a
2 defendant has been fingerprinted. If this approach were
3 adopted statewide, fingerprint compliance rates would
4 likely mirror those observed in Philadelphia County.

5 Lastly, in cases where charges are dismissed,
6 withdrawn, or plea bargained at the MDJ level to a lesser
7 offense that does not require fingerprinting, case
8 disposition should not be finalized unless and until the
9 defendant has been fingerprinted for the original charges.

10 Moving forward, we welcome the opportunity to
11 work with the Legislature, the courts, or any agency in
12 furthering the goal of improving the fingerprinting
13 process. And thank you again for the opportunity to be
14 here and we'd be happy to answer any questions.

15 MAJORITY CHAIRMAN MARSICO: Thank you very much.

16 Chairman Caltagirone for questions.

17 MINORITY CHAIRMAN CALTAGIRONE: Colonel, I'm just
18 curious. There's a lot of places, and the MDJ had stated
19 it and we discussed it a little bit. This is a big State.
20 You have barracks and facilities in the boondocks that many
21 of the smaller communities really don't have a police
22 presence but you do, and of course that's your
23 jurisdictional area.

24 However, that being said, I'm a one-man police
25 department. I may not have background training or even the

1 equipment to do fingerprinting. But I arrest somebody and
2 your facility is close by. Do you or do you not allow
3 those local municipal police departments that may be one,
4 two, three men to bring them in to have them processed with
5 your fingerprinting expertise? I mean is that possible?
6 Do you cross those lines?

7 I look at the police and say they're all in the
8 same boat. I understand you're State Police and they're
9 local police. You may have equipment that they don't have.
10 Is it possible that that can happen in some of the rural
11 areas? You know, even in some of the bigger counties like
12 Berks County, they've eliminated their local police
13 departments because they don't have the money to continue
14 to maintain them and to save on the property tax.

15 And Hamburg is close by. Rather than coming all
16 the way into the City of Reading for central processing
17 with the sheriff, I know you have fingerprinting
18 capabilities, let's say, up at Hamburg. But then a lot of
19 the northern tier counties, I'm just thinking, you have
20 facilities scattered all around the State. Is that
21 possible?

22 LIEUTENANT COLONEL SNYDER: And we actually
23 discussed that option and that possibility. There are a
24 lot of issues that come into play. First of all, our
25 staffing does not really permit somebody to be on station

1 to be able to Live Scan someone. Typically, a lot of times
2 we may only have a PCO working. So safety and security is
3 a problem, being able to operate the Live Scan and ensuring
4 the proper ORI, the originating identifier for the agency
5 is available, and it takes some experience and some
6 training and some knowledge by that local police officer to
7 be able to operate the Live Scan because we wouldn't have
8 the personnel available to provide that service. And that
9 was one of the reasons behind the central booking sites, to
10 be able to provide that service more broadly to the
11 agencies that need it. And as we said, we also accept the
12 inked fingerprint cards for agencies who don't have access
13 to Live Scans.

14 MINORITY CHAIRMAN CALTAGIRONE: See, and that's a
15 couple points I want to make yet. We know where the dark
16 spots are, where they don't have access. They may not have
17 central booking; they may not have Live Scan. What do we
18 have to do to make that happen, number one? And number
19 two, is it a matter of additional training?

20 You're saying, well, if I'm a one-man police
21 department and I don't have the training but you're right
22 close by where I can bring the defendant for processing,
23 fingerprinting, and you have somebody there that could do
24 either Live Scan or whatever and it boggles my mind that
25 there's, what'd you say, 400,000 prints that come in on the

1 paper sheets. How far have we come if we're supposedly
2 doing a lot of this electronically? Be free to answer any
3 of the questions that I fired at you.

4 LIEUTENANT COLONEL SNYDER: Well, I think the key
5 is to increase the number of Live Scans available and the
6 availability of those smaller departments to have access to
7 them. Admittedly, the problem isn't necessarily the
8 smaller departments because the number of arrests that they
9 make pale in comparison to some of the larger jurisdictions
10 and the need for those folks to have ready access to Live
11 Scans. But it is a big concern for those agencies who need
12 to travel a distance to get to a central booking center. I
13 totally agree.

14 And again, the inked cards are certainly an
15 option. Prior to 1991 the inked cards were the only thing
16 available and every police officer who graduated from any
17 academy learned how to do them. Unfortunately, we've kind
18 of drifted away to this specialty of police officers in
19 that I can't process somebody; we have somebody
20 specifically able to do that. And it kind of narrows the
21 opportunity I think for folks to be processed because not
22 every police officer understands how to do it or the
23 importance of it, frankly.

24 MINORITY CHAIRMAN CALTAGIRONE: Well, when you
25 say about the Live Scans, and this is just the final piece,

1 how difficult is it to teach somebody to do the Live Scan
2 and to make sure that they're doing it properly?

3 LIEUTENANT DESKIEWICZ: During a Live Scan
4 installation, normally the machine is installed and the
5 training occurs that very day. So within a couple of hours
6 the police department who's getting it, an appointment is
7 scheduled, they have all the personnel that are going to be
8 required to get the training be present, and within a
9 couple hours -- it's not that complicated and it's a step
10 process where the software literally leads you through the
11 booking process. So it's not a difficult skill---

12 MINORITY CHAIRMAN CALTAGIRONE: Okay.

13 LIEUTENANT DESKIEWICZ: ---as opposed to ink
14 fingerprinting. I mean with the Live Scan, and there
15 should be some difference here, with the Live Scan we have
16 quality thresholds. So the quality of our fingerprinting
17 across the Commonwealth went up substantially because when
18 you roll that fingerprint, the machine actually has a
19 quality threshold that it will light up and say, no, try
20 that one again; it's not that good. And they get the
21 opportunity to make the best possible fingerprints for that
22 submission. With ink cards, you get one shot at it, you
23 put the ink down, and you mail it in. So Live Scan is a
24 substantial step forward with fingerprints.

25 And we don't want that, though, to appear to say,

1 well, we don't have a Live Scan solution now so we're not
2 printing people. And it's too hard to drive 110 miles
3 round-trip. I mean ink was put on card back in 1880 and
4 it's still being put on paper today in 2014. It works
5 great. It's very effective. Our Bureau of Forensic
6 Services, in cooperation with the PA Chiefs of Police,
7 still put on free training where people can learn to put
8 ink prints on paper, ink palm prints. We take them, we
9 card-scan them, and we submit them to the FBI on their
10 behalf. So if it's a circumstance even if they have access
11 to a central booking center but it's not convenient or they
12 can't get that appointment, they can always put ink on
13 paper and the PSP will always take it in card-scanner form.

14 MINORITY CHAIRMAN CALTAGIRONE: Well, when you
15 say the Live Scan, and that shows whether or not it took or
16 it didn't take, it's almost fool-proof, isn't it, number
17 one? And number two, what is the cost for one of those
18 machines?

19 LIEUTENANT DESKIEWICZ: I believe PCCD quoted
20 earlier between \$35-\$37,000 for a full booking center. And
21 then sometimes the problem with the smaller departments
22 it's not acquiring the equipment because they may be able
23 to get grant money for it; it's the thousands of dollars of
24 annual maintenance fees---

25 MINORITY CHAIRMAN CALTAGIRONE: Maintenance.

1 LIEUTENANT DESKIEWICZ: ---that they can't
2 maintain. So that in a lot of the upper tiers is the
3 problem, and until we find a way to lower that through
4 technology, which will occur in time I'm sure, but
5 presently it's still a lot of money for them to afford and
6 it would most likely be a lot easier for them to just ink
7 the cards.

8 MINORITY CHAIRMAN CALTAGIRONE: Thank you.
9 Thank you, Mr. Chairman.

10 MAJORITY CHAIRMAN MARSICO: Thank you, Mr. Chair.

11 When we toured the Cranberry Township Police
12 Department last week, the Committee did, they did
13 demonstrate the Live Scan, and I agree; it doesn't seem
14 like it would be that complicated to -- well, it would take
15 a few hours' training to learn how to operate the Live
16 Scan. It is, they had mentioned, around \$30-\$40,000 I
17 think as well. And what was the maintenance cost did they
18 say?

19 UNIDENTIFIED SPEAKER: It was a couple thousand
20 dollars a year.

21 MAJORITY CHAIRMAN MARSICO: A couple thousand
22 dollars a year to maintain it. So we really appreciate the
23 recommendations that you provided to us today. And just
24 out of curiosity, I'm sure that the State Police has 100
25 percent compliance with this?

1 LIEUTENANT COLONEL SNYDER: I wish we could say
2 that, sir. Our compliance is not perfect; it's about 90
3 percent but we're certainly trying to identify the
4 shortcomings and address them.

5 MAJORITY CHAIRMAN MARSICO: Right. Okay. Well,
6 once again, thank you for your recommendations and being
7 here for the testimony.

8 LIEUTENANT COLONEL SNYDER: Thank you all very
9 much.

10 MAJORITY CHAIRMAN MARSICO: That concludes the
11 hearing. Thanks to all the Members and all the testifiers
12 for being here.

13

14 (The hearing concluded at 12:20 p.m.)

15

16 I hereby certify that the foregoing proceedings
17 are a true and accurate transcription produced from audio
18 on the said proceedings and that this is a correct
19 transcript of the same.

20

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Christy Snyder

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