Good morning Chairman Marsico, Chairman Petrarca, and members of the Judiciary Committee. My name is Ed Marsico, and I am the District Attorney of Dauphin County and Chair of the Legislative Committee of the Pennsylvania District Attorneys Association. With me is David Freed, Cumberland County District Attorney, and President of the Pennsylvania District Attorneys Institute. We are both past presidents of the PDAA.

We appreciate your asking us to testify before you this morning on SB 859, which would effectively merge the supervisory functions of the Pennsylvania Board of Probation and Parole (PBPP) into the Department of Corrections (DOC). SB 859 would bring a significant change to our criminal justice system, a change that we believe merits considerable and detailed discussion. For all of its good intentions, we oppose SB 859 in its current form and believe that it could have the potential to compromise public safety.

It is important to note that the present version of SB 859 is vastly improved from what it was in its original form. Originally, SB 859 contained language that would have put the PBPP budget under the control of the DOC, provided for possible reduced prison sentences for parolees convicted of new crimes, and permitted the DOC to remove parole conditions required by the PBPP. Amendments added into the bill in the Senate resolved those issues. While we still oppose the bill, we would be remiss if we did not note these changes and acknowledge the Senate and Secretary Wetzel for their willingness to allow SB 859 to be amended.

From our perspective, the salient issue to consider in SB 859 is this: should the DOC assume the supervisory and sanctioning responsibility for state-sentenced inmates who have been paroled? Unfortunately, our answer is no.

We say unfortunately because we have tremendous faith in Secretary Wetzel. He has improved our corrections system in ways no one could imagine, he works with others, he relies on data, and ultimately he has complete integrity. Indeed, if Secretary Wetzel was going to be Corrections Secretary for life, our concerns with SB 859 would be significantly mitigated. He will not be Secretary for life, however, and we must examine the legislation knowing that reality.

Moreover, our system is by no means perfect, and none of us should be complacent enough to think that change to both agencies is not necessary. Recidivism rates are too high; supervision is not ideal in every circumstance; and

caseload rates remain much higher than they ought to be. New programs, either those that are deemed "best practices" or those that are newer but worthy of exploration, ought to be considered as part of the supervision process. At the same time, our community corrections centers and facilities are not what they should be. Escapes, use of illegal drugs, and mere transfers of those parolees who have committed serious infractions to other halfway houses seem to be occurring too frequently.

Over the past decade, Pennsylvania has taken significant strides to improve the operations of our correctional and parole systems. The Pennsylvania District Attorneys Association was heavily involved in these changes and supported them. In 2008, Pennsylvania enacted significant prison reform legislation that created earned time (also known as RRRI, the recidivism risk reduction incentive) for those less violent offenders who stayed out of trouble while in prison and completed appropriate programming; the bill permitted administrative parole for those less violent offenders whom the PBPP believed did not need much more than an annual check-in; and it required those offenders whose statutory maximum sentence was two or more years be sentenced to state prison, primarily because state prison provided better programming than our county jails.

In Act 122 of 2012, which was part of the Justice Reinvestment Initiative, limited both the circumstances and the length of time for which technical parole violators (TPVs) could be sent back to state prison. As a result of this legislation, fewer technical parole violators are now returned to state prison. This change was important in that it significantly reduced the discretion the PBPP had over certain technical parole violators. We supported this change.

Additionally, and as you have heard us say many times, we have advocated for the establishment of and funding for problem solving courts before problem solving courts became popular. We argued for them because we knew and continue to know that certain offenders need to be treated differently and that addressing their underlying criminogenic needs will reduce the likelihood of recidivism.

Again, at the core of each of these reform efforts was recidivism reduction. One logical result from recidivism reduction is cost savings, because fewer people committing crimes ultimately means fewer people going to prison. And that's the

whole point: lowering recidivism rates and thereby sending or returning fewer people to prison, ultimately resulting in reduced costs, is a good strategy. Additionally, it means fewer victims from future crimes. These reform efforts were predicated on this philosophy, and that is why we were supportive and involved in virtually every aspect of these reforms efforts.

We cannot be sure that SB 859, by contrast, will achieve the same results. SB 859 will make parole officers employees of the Department of Corrections. The DOC is an executive branch agency which answers to the Governor. The PBPP, which currently supervises parolees, is an independent agency. SB 859, therefore, transfers both the supervision and sanctioning of parolees to the executive branch.

Having two agencies, one of which is independent, involved in the decision-making process has provided the appropriate balance. This is the system we have now. By contrast, having the DOC, an executive branch agency, make decisions about sanctions, revocations, and recommitments of technical parole violators creates an inherent conflict. One of the DOC's concerns – regardless of whom is Secretary – is the size of its prison population and the attendant costs of incarceration. Any governor can call on his or her employees, including those at the DOC, to cut correctional costs by returning fewer parole violators to prison. There would be no check on such a policy, and there would be no independent body which does not have the budgetary concerns to say that such a strategy is detrimental to public safety.

The tension of having an executive branch agency and an independent agency involved in the management of technical parole violators is healthy, especially when it comes to discipline and sanctions against those who have violated parole conditions.

We believe the current system of vesting supervision and sanctions of parolees in an independent parole board works well. Fewer technical parole violators are returned to prison. According to the PBPP, since 2006, the percentage of the parole population that has returned to prison as technical parole violators has decreased by 40%. Since 2012, when Act 122 was enacted, the percentage of parolees based on the average monthly population who were technical parole violators decreased by 16%.

These are important figures. Consider what we are saying. We are applauding the reduction of technical parole violators being returned to prison. We know that putting a technical parole violator back into prison does not always yield a positive result.

But not all technical parole violators are created equal. And leaving the decision of what to do with those who have committed violations exclusively in the hands of the Department, which is part of the larger executive branch bureaucracy, is concerning.

Consider also that under current law, as a result of Act 122, the PBPP already lacks significant authority over managing technical parole violations. TPVs can only be recommitted to a state prison or county jail if they meet one of five criteria:

1) The violation was sexual in nature;
2) The violation involved assaultive behavior;
3) The violation involved possession or control of a weapon;
4) The parolee absconded, and the parolee cannot be safely diverted to a community corrections center or community corrections facility;
5) There exists an identifiable threat to public safety, and the parolee cannot be safely diverted to a community corrections center or community corrections facility.

These TPVs can be recommitted for up to 6 months for the first recommitment; up to 9 for the second; and up to 1 year for any others. At the end of the applicable time period, the offender is automatically reparoled without any review by the PBPP, unless the offenders engaged in certain forms of misconduct during the recommitment.

Those TPVs that do not meet any of the five criteria above can be subject to a wide variety of sanctions. Some do not involve any further loss of their liberties. Some will be sent to community corrections centers and facilities and others to secure parole violator centers.

The point is that Pennsylvania has already significantly modified the way we deal with technical parole violations and greatly limits who can go back to state prison. It is not clear to us what further legitimate tangible goals would be achieved with the additional changes that enactment of SB 859 would bring.

An additional concern is that SB 859 would shift the decision to the DOC about whether parole violators could be diverted safely to a community corrections center or community corrections facility, and we believe that determination should be left to an independent agency.

We also oppose SB 859 in its current form because we worry about the quality of supervision that would be provided by the DOC. We have this concern because many of us have heard alarming stories about an increasing number of parolees absconding from the community correction centers and facilities (which are run or contracted by the DOC), the use of synthetic drugs in these facilities, the failure to report the use of these deadly drugs, and the movement of some parolees who commit violations in these facilities to other similar facilities instead of any significant sanctions, such as a recommitment back to prison.

That is not to say that Secretary Wetzel has not improved these facilities. He has. A 2009 study found that recidivism rates were higher at the private community contract facilities than at the community correction centers, even though the contract facilities offered far more programming than the community corrections centers. The 2009 study was devastating and illustrated significant problems with the oversight and management of Pennsylvania's halfway houses.

To be sure, the time period this study examined was before Secretary Wetzel became Secretary. When he took over, he implemented reforms, including improvements to the contracting and performance evaluation procedures. We have seen tangible improvements. But for the reasons we stated above, we do not believe that these improvements are sufficient to merit more oversight responsibility with the DOC.

We also wanted to share our concerns about a provision in the bill that is more indirectly related to merger. It would allow the DOC to implement a program of swift and certain sanctions for technical parole violators. The language provides that the DOC could send a parolee to a prison for no more than 15 days. This language is modeled on the Hawaii HOPE program, which provided for a system of short swift and certain sanctions for certain probationers, including users of methamphetamine. This program was limited to lower level offenders, not necessarily the kind of offenders that would be sentenced to state prison in Pennsylvania.

We are aware that both Washington and North Carolina have taken this program and applied it more globally to some of their state offenders. While these state programs appear to have had some success, we do believe the language in SB 859 needs to be modified. As written, the DOC could impose a short three day sanction against an offender who committed a technical violation that was sexual in nature or involved assaultive behavior. Such a sanction could be applied against a high-risk offender or someone who has possessed illegal firearms. While the DOC would likely develop a sanctioning grid, we believe that the specific components of this proposed program in Pennsylvania should be better addressed in the bill. We do not believe that we should leave it solely to the DOC to determine who should be eligible for the program and who should not. We should discuss levels of risk, what instrument should measure risk, the kind of parole violation that is at issue, an offender's underlying offense, as well as any prior misconduct in his or her past.

We do not oppose the implementation of this program. Targeted in the right way, we believe it will be useful. But all of us need to work with Secretary Wetzel and the PBPP to appropriately design the framework of this program so that it applies to the right people. Moreover, we should look at the successes and failures of other jurisdictions that have this kind of program. For example, a three day sanction for an offender who is drug addicted who possesses drugs in violation of his parole conditions might not do much to help his addiction. Absconding, or as we call it – escape – should be treated as an extraordinarily serious violation, because if word gets out that an escape will just lead to a few extra days in prison or a community corrections center, we would see more and more escapes.

A lot has been said about merging the two agencies in order to reduce administrative costs. We are all for administrative savings, and any money saved by eliminating redundancies and inefficiencies should be reinvested back into the system. But all the administrative savings in the world cannot make up for the potential damage to public safety that SB 859 may cause.

While we oppose the bill as written, we do not believe this is an endeavor that should end if this version of the legislation does not move. The recidivism rate is too high; we need more parole officers; we need for parole officers on the streets

helping offenders reenter society; sanctions should be tailored; we should always be looking to see if the current system which already reduces the PBPP oversight over the sanctions should be modified further; and our community corrections centers need targeted improvements. Ultimately, however, the potential conflict with having the DOC determine the level of sanctioning for parole violations gives us great pause.

In short, we hope that SB 859 does not proceed in its current form at the present time. We do hope that there can be further discussions about achieving many of the same goals that the DOC seeks with different language and with more protections against an inherent conflict the DOC as an institution might have when it comes to supervision and sanctions.

We appreciate your consideration of our views and are happy to answer any questions.