



Testimony of

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Before the House Judiciary Committee

On

**Proposed Merger of the Department of Corrections and Board of Probation and
Parole**

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Harrisburg, PA**

Good Morning. On behalf of the Pennsylvania District Attorneys Association, thank you for the opportunity to testify about whether to merge most of the functions of the Board of Probation and Parole into the Department of Corrections.

The two of us testified before the full Judiciary Committee on this same topic in December 2015, and the position of the District Attorneys Association has not changed. At present, we remain opposed to the merger legislation.

We do not dispute the motives or intent of the bill's supporters; the goals of the legislation are laudable. In fact, were we to believe that these goals would be achieved, we might very well support the bill. We have not, however, been presented with sufficiently specific arguments in support of the merger.

At the outset, we are pleased that the legislation seeks to preserve the independence of the initial decision-making process of the PBPP. The Board needs to make individualized determinations without the interference – real or perceived – of the Department of Corrections or any other part of the Executive Branch.

We believe the legislation does fall somewhat short in this regard as it does not expressly require the line-item for the Board to be separate from the DOC. We also believe the Board should have its own legal advisors. We believe the Board Secretary, which is an important high-level position within PBPP, should be appointed by the Chair of the Board. And we believe the legislation should make clear that the Secretary of the DOC shall not restrict resources, including staff assistance or limit access to vital information, or present inmate information in a manner that may inappropriately influence the Board in its decision making.

Such changes would be important, but not dispositive. A salient question we need to discuss is whether the DOC should assume the supervisory and sanctioning responsibility for state-sentenced inmates who have been paroled. To analyze this issue we need to consider several issues:

1) Should the DOC oversee the field supervision?

We are not necessarily opposed to this change, but we do have concerns about the quality of supervision that the DOC would provide. This concern is based on the poor results from many of the existing community corrections centers. They are characterized by unacceptably high recidivism rates, rampant drug use, and too frequent escapes. These problems relate to the legislation if they reflect the quality of supervision that the DOC agents will provide. The DOC has rightly acknowledged these shortcomings, but it did take too long in our opinion for the problems to be acknowledged. There should be a discussion about how situations where the outcomes are poor can be addressed much quicker.

2) Should the DOC have any role in the revocation decision?

The answer is unequivocally no. Under this bill, the DOC will have significant decision-making power when it comes to whether certain technical parole violators (TPVs) should be sanctioned. While the legislation provides that the hearing examiners that make the sanctioning decision remain employees of the Board, the initial determination as to whether the examiners should ever consider sanctions in the first place will be made by the DOC employees. Put another way, unless DOC employees conclude that a particular offender ought to be subject to sanctions, there will be no sanctioning resulting in an offender having his or her parole revoked.

3) Are there cost savings?

We have reviewed the fiscal note to the legislation. It is simply unclear where the purported cost savings will come from. We hope this hearing will help shed light on whether there will actually be any real cost savings. The amount of money alleged to be saved seems to be a moving target and seems to have increased since the original merger legislation was first introduced.

4) What is the benefit of merging?

We have heard that merging the two entities will create better results. We have been told that the merger will result in more coordination, collaboration and continuity. These are important points, but we need to know more. What are the specific problems in our current unmerged system, and how will these specific problems be resolved with the merger? Again, we hope these points will be explained during the hearing.

This is not a reflection of our views on Secretary Wetzel. We know the Secretary cares about good outcomes, reducing recidivism, looking at data, and implementing best practices. To be sure, we do disagree with him from time-to-time, and no doubt he disagrees with us from time-to-time. But we have **tremendous confidence in Secretary Wetzel's abilities to manage a good and effective correctional system.** And at the same time while we believe strongly in maintaining the independence of the Board throughout the supervision process, we have not always historically had the same level of confidence in the Board leadership that we did in the DOC leadership. Our concerns are not about liking one agency or the other better. Our concerns reflect a broader, more long-term institutional perspective.

One critical point that often gets lost during the discussion is that Pennsylvania's Corrections and Parole systems are effectively quasi-merged already. As we explain below, the Board has had some of its decision-making discretion limited and some of its core job functions moved to DOC.

With regard to the Board's decision-making discretion being limited, you may recall that in Act 122 of 2012, which was part of the first Justice Reinvestment Initiative, Pennsylvania limited both the circumstances and the length of time in which technical parole violators could be sent back to state prison. As a result, the Board does not have 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 safely be diverted to a community corrections center or community corrections facility;
- 5) There exists an identifiable threat to public safety, and the parolee cannot safely be 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 one year for any others. At the end of the applicable time period, the offender is re-paroled automatically without any review by the PBPP, unless the offender engaged in certain forms of misconduct during the recommitment.

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

Moreover, we are told that several of the PBPP functions have already been absorbed by DOC. For instance, PBPP no longer has independent research staff. Institutional parole agents have been reassigned, and we are told that some administrative functions of the Board will be housed within the DOC.

In short, the PBPP is not entirely separate from the DOC and some of its core functions are significantly limited by statute. And, given the fact that some functions of the Board, such as research, are now conducted by DOC, we wonder whether the projected cost savings includes the fiscal savings from these changes.

One substantive note on the bill: as we mentioned above, current law does allow technical parole violators to be recommitted back to prison if there exists an identifiable threat to public safety and the parolee cannot be safely diverted to a community corrections center. The legislation provides that this exception does not apply, even if the parole violator poses a threat to public safety, unless:

- the offender has threatened harm to a member of the public or a Commonwealth employee;

- the offender has been recommitted as a technical parole violator because of a conviction for a summary offense in a court;
- the offender has been previously recommitted to a community corrections center, community corrections facility or parole violator center and served 61 days or more in disciplinary custody following the previous recommitment; or
- the department does not have an available bed in a community corrections center or parole violator center or an entity with whom the department contracts does not have an available bed in a community corrections facility because of a restriction imposed by the provisions of a Federal, State or local statute.

We believe this proposed change should be removed. If a parole violator is a threat to the public, that is all that should matter. We cannot limit who goes to prison based on costs, and it appears that this language is designed to reduce the size of the prison population despite the public safety risk of not returning dangerous parole violators to state prison.

Public safety decisions cannot be made with an eye toward saving money. Your analysis, in our opinion, should not be about how much money will the merger save. The questions should focus on what will the effect of the merger be. If the answer to the question is that it will not improve outcomes and will reduce independent decision-making, then we believe you should reject the legislation. Based on our review of the legislation and the information provided to us, that is our conclusion at this time.

We are not opposed to continuing to work on this legislation, particularly if we receive more information about the expected results of the legislation.

Thank you for asking us to testify this morning.

Testimony by: Edward Burke, Board Member
Pennsylvania Board of Probation and Parole

I do not come before this committee with a malice or condescending purpose. I chose to testify in the matter of public safety in which I have played a part in for thirty-five years, over thirty two years with the parole board. I have listened to and have debated this proposal for over forty years, several different administrations, Democrat and Republican, and in the end this proposal has continually been viewed as unacceptable or not the right time with respect to public safety.

My background includes graduating from Harrisburg Community College in Police Science and Penn State University in Administration of Justice. I worked for Dauphin County Juvenile Probation from 1982-March of 1985. In March of 1985 I began my career with the Parole Board at SCI-Rockview as a Parole Agent. I later became the Parole Supervisor at SCIR and was appointed to the Parole Board in October of 2013. My father began his career at Farview State Hospital as the Athletic Director, he then became a Parole Agent and rose to the position of Superintendent of Parole. He worked for the Parole Board for over thirty-eight years and debated this issue a number of times, including debating Gov. Shapp in the 1970s.

I am an open minded person, open to debate, but I have not heard one good reason for the merger. If I did, I would welcome further information, but have not received any convincing information.

For years I have paid attention to the system. At an early age, I can recall sitting in the back yard of Board Chairman's houses listening to interesting discussions of a business with public safety at the forefront. I was always impressed with the discussion of professional executive decision making, discussed by people with years and years of experience in field supervision. Training was formulated by executives with years of experience, assessments and evidence based practices were adopted and decision making and supervision practices were thoughtfully formulated. The Agency was always proactive, always looking at evolving ideas and practices. We are and always will be the experts of field supervision with public safety at the forefront.

When discussing the merger I have basically been given four reasons:

Money – ten million dollars. I have asked but never seen where this money would be saved. I have requested line items and have not seen them. Even if this is a savings, is ten million dollars in a 1.3 billion dollar budget worth the risk of public safety. I have always thought that the foremost responsibility of government is public safety.

Continuity of Service – I am not sure what is meant by this. We have outstanding parole agents, reentry agents and supervisors inside institutions who gather information for decision makers. These agency employees are very vested and report additional important information not often included in DOC reports. We have an outstanding reentry program including ASCRA agents who provide continuity of care through group therapy when released. To include cognitive therapy, violence prevention booster, family reunification, job development and other important continuity of service care. We have outstanding reentry courts with support on a National basis. We are

currently reducing CCC bed dates and have better results sending our offenders home to a home plan.

Redundancy of Work – Again I am not sure what is meant by this. Having worked in an institution for twenty-nine years, and now as a decision maker, I have seen the necessity of having our vested agency institutional staff in reporting accurate and researched information for the decision makers. I do believe everyone in this business has public safety front and center; however, DOC is primarily responsible for care, custody and control. The parole agency staff is responsible for continuity of service from release until maximum sentence is complete. The parole agency is the reentry and field supervision experts. I do believe both agencies do an outstanding job with their designated responsibilities.

Reduction in Recidivism – Recidivism rates for offenders that are paroled to a home plan under parole supervision are trending down, whereas paroling to CCC are trending up. When looking at parole violators, the majority of our recidivists waive their hearings. With this said, they are admitting to their guilt, admitting that we have thoroughly worked with them through diversions and sanctioning grid which leads to the parole violators admitting a need for recommitment.

We have worked hard to determine public safety risk. PA Parole Board is on the cutting edge of decision making nationally and internationally. We use evidence based practices, machine driven forecasts, and our expertise in cognitive behavior to determine public safety risks. Continuity of service is achieved through thorough training of institutional and field agents in reentry, EPICS, sanctioning grids and basic field service practices. We remain at the forefront of parole boards in the country. National and international parole boards continue to ask our opinion and reach out for advice. Professional organizations such as APAI and the Department of Justice value our input. We are not perfect but we are great at what we do.

In closing, I do not see any positives or advantages to this proposal. Consequences are not etched in stone. I have not, nor will I ever be convinced that we should risk consequences when we are talking about public safety.