MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Eighth Session
March 11, 2015

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Wednesday, March 11, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Nancy Davis, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Robert W. Lueck, Private Citizen, Las Vegas, Nevada
Steve H. Fisher, Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services
Stephen R. Minagil, Private Citizen, Las Vegas, Nevada
Marshal S. Willick, Private Citizen, Las Vegas, Nevada
Andres Moses, representing Eighth Judicial District Court
Natalie Wood, Chief, Division of Parole and Probation, Department of Public Safety
David Helgerman, Lieutenant, Northern Command, Division of Parole and Probation, Department of Public Safety
Kristin Erickson, representing Nevada District Attorneys' Association
Connie S. Bisbee, Chairman, Board of Parole Commissioners
Vanessa Spinazola, representing American Civil Liberties Union of Nevada
Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender
Brian Vasek, Legislative Extern, Clark County Public Defender

Chairman Hansen:
[Meeting was called to order. Committee protocol was explained.] I will open the hearing with Assembly Bill 210.

Assembly Bill 210: Revises provisions relating to family law. (BDR 1-818)

Assemblyman James Ohrenschall, Assembly District No. 12:
I am not a family law practitioner, but a lot of good ideas for legislation come to me from constituents. That is how this bill came about. I have with me Mr. Lueck, who is an attorney from Las Vegas. He has also been a family court judge in the Eighth Judicial District, and a practicing family law attorney. He came to me with the idea of trying to take alternative dispute resolution and expand its use into the family law setting. It has been very successful in Clark County, where it has been used in many different arenas. The hope is that it will help parties save money, save time, save aggravation, and save judicial resources. With that, I would like to turn it over to Mr. Lueck.

Robert W. Lueck, Private Citizen, Las Vegas, Nevada:
I have been licensed in Nevada since 1976 and have been practicing almost 40 years. That includes 6 years as a family court judge in Las Vegas. During that time I handled predominately family law cases. Unfortunately, in the advisory system, I have seen people literally destroyed financially, left in ruin, left bitter, broke, and angry at the system. These people blame the lawyers, the judges, et cetera. When I was in family court I was one of those involved in strategic planning for our family court. One of the ideas we had was how can we reduce this cost to the public? How do we help these people through the most difficult times of their lives? Divorce is a very destructive process.

I have also submitted a written statement (Exhibit C), and I would like to touch on the highlights. In 1997, when this Legislature passed Senate Bill No. 419 of the 69th Session on mandatory mediation for custody and visitation, we joined many other states. California first formally required it in 1980. Since then there are over 37 states plus the District of Columbia that have mandatory mediation. Some states have gone toward mandatory mediation for all issues. North Carolina went to mandatory mediation for all issues in 2001 and ended up with a 64 percent settlement rate. Utah went to mandatory mediation in 2005 and in my research, statistics from the Alternative Dispute Resolution Office Administrator at the Utah Supreme Court indicate that the full range of settlements are 57 to 62 percent, partial settlements are 12 to 15 percent, and no deals are 21 to 25 percent. I did not include statistics on early neutral evaluation, which is a program pioneered and run very strongly in the family court in Minneapolis/St. Paul, Minnesota. Their program averages around 70 percent settlement rate. In 2011, the Nevada Legislature passed the Uniform Collaborative Law Act. Settlement rates in collaborative are 80 to 90 percent. That is why we want to expand the mediation. The question has always been, why do we not expand the mediation to include all these issues? That is the purpose of this bill.

The Outsource Mediation Committee (OMC) consists of a judge or judges, lawyers, mediators, people from the Family Mediation Center (FMC), the Neighborhood Justice Center (NJC), and we have actually had law professors from the University of Nevada, Las Vegas (UNLV). We are a collection of the senior members of the legal community. We are not amateurs. I have estimated that our collective experience is over 200 years in the legal business, most of it in family law. We have experience in thousands of cases. We did a lot of research, had seminar studies, et cetera. Every word or phrase in the bill that we sent up through Assemblyman Ohrenschall was parsed, picked over, debated and discussed. This is a "win-win-win" bill for the public, the lawyers, and the judiciary.

We want to go towards mediation because we think we can save people a lot of money. I know some of the opponents think that it is not going to be effective, that it is costly, and that it adds another burden. Not true. It actually streamlines the process. I can think of no better example than one of my former colleagues, Robert Gaston. He used to have settlement conferences on his own. He was settling 70 percent of his cases. Every mediation program that we looked at had high statistics, well above 50 percent. When there are methods that will settle two-thirds of divorce cases, we need to take a serious look at them. We have to have this discussion. Why not make the system more efficient?

Currently, there are so many people having financial troubles. Once you get past $6,000 in legal fees, people cannot afford it. We came up with this idea on how we can streamline the system and make it work better. The legal adversary system has a complex set of rules and processes that take a lot of time and effort. It is slow, it is tedious, and it is expensive. Mediation is a point A to point B process.

I am an old blue collar guy. I grew up on a farm; I have worked in factories and construction sites. That is how I put myself through college and law school. I know what these people go through. They cannot afford a lot of litigation. The point is, let us work out a mediation program for these people to resolve their issues. These programs we hear about are not experimental; they are not novel; they are not unique. These have all been tested in practical experiences elsewhere. They work. They work very, very well. It is not a one size fits all that will work for every case. There are cases that are not going to work with mediation. But here is the beauty of this for the judges: this is a huge bill that will increase judicial efficiency. There is an old axiom in the judicial circles that 10 percent of your cases take up 90 percent of your time. There are high conflict cases of people with alcohol issues, mental health, drug abuse, criminal, domestic violence, et cetera. Those require a lot more time and attention. It is much more efficient if we can clean out a lot of the smaller, easier cases. The judges would then have more time to focus on the more complex, difficult cases. It is not slowing down the process; it is speeding up the process. Mr. Gaston could get a trial in his department in 90 days. There are so many ways that we can actually speed up the process. This is an empowerment bill. We enable the family courts to create this process, expanding mediation. How exactly that will be done is a design issue for the court itself.

Let me dispel a couple of points. It has been brought to our attention that perhaps the child support enforcement should be excluded from this process. We agree. We are not going to oppose any amendments to the bill that take the child support enforcement proceedings out of the mediation.

I would also like to point out that currently there are a number of mandatory mediation practices in our courts in Las Vegas. In justice court, all small claims are subject to mandatory mediation. The Nevada Supreme Court runs a civil appeal settlement program, which is mandatory. Notwithstanding final orders and judgments, they are still resolving 50 to 55 percent of the civil appeals, which has a huge impact on the Supreme Court's caseload. Medical malpractice—people still file a lawsuit, but cannot go to trial without going through the medical legal screening judicial settlement conference program that the Supreme Court runs. There are a number of examples why we do this.

The other issue I have heard is the financing of this. The intent of contemplating this program was that we would create a large pool of outside private mediators. We would not add more staff to the FMC. We would create a pool of qualified mediators and use local court rules to develop the processes by which mediators would operate. It is important that we have a quality mediation program where the mediator skills are matched with the complexity of the case. Simple mediations can be done by nonattorneys, for example. More complex cases will need senior attorneys with experience in various areas. Those are all design issues.

Why would we want to go to a mandatory program? The litigants would have a choice of collaborative early neutral evaluation, which we have not set up yet in Nevada, or mediation as a mandatory default. If you do not choose one, the court chooses one for you. This is going on all over the country. There are a number of states and a number of courts where you cannot go to trial without going through a settlement process. We want Nevada to take the next step. This is not a radical departure from the family court that was created in 1991 when this Legislature strongly encouraged the creation of alternative means of resolving cases. In 1997, you added mandatory mediation for custody visitation. One thing no opponent to this bill can argue is that it works. It is very successful wherever it has been tried in terms of programs. The numbers are there that show it is a very effective, efficient way. We reduce costs to the public, and we reduce the stress to the lawyers.

I have done divorces every which way you can, all the way from simple negotiations up to appeals to the Nevada Supreme Court. I vastly prefer the non-court alternative methods. It is so much less stressful. We take the winning and losing out of it and work on solutions that fit the parties. We can do this faster, much cheaper, and more efficiently. That is why we would like this Committee to look at this bill for the benefit of the public.

Assemblyman Thompson:
You mentioned the NJC, which is very dear to my heart. I used to work for them as a trained mediator. What part will they play if this passes? Will they help facilitate, recruit, and train the community volunteers?

Robert Lueck:
The NJC generally stays out of family law cases. They did it unofficially a few years ago, but they have their hands full with the justice court referrals. I think that is enough for their program. They have been involved in some of our meetings because we share a common interest in mediation and how we can make it more effective for the public. The OMC is in family court, and Judge Jennifer L. Elliott has submitted testimony (Exhibit D). We set up policies and standards for mediators and training. We want people trained specifically on the ins and outs of family law and family dynamics. We certainly welcome the input from the NJC; I think they perform admirably in resolving lots of cases for the justice courts.

Assemblyman Nelson:
Mr. Lueck and I have been adversaries in cases; we resolved our differences and have become very good friends. I highly respect him. In Judge Elliott's letter, she made a comment that I want to ensure is covered in the bill. She said, "It is important that parties be able to opt out and that the Judge can make findings to exclude any particular case for a myriad of reasons such as domestic violence, it would be unproductive, lack of finances, unequal bargaining power, et cetera." I am looking at the bill, section 2, subsection 2, paragraph (b), where it says the court can exclude certain cases from the program, and it lists a number of reasons. Subsection 4 says that a case is excluded from the program if there are mental health issues, personality disorders, et cetera, which would not result in a final resolution of the dispute. Do you think that language is broad enough to cover the concern of Judge Elliott, where it would possibly be unproductive for lack of finances or unequal bargaining power? I agree with the premise that most of these cases should go to mediation.

Robert Lueck:
We had a lot of discussion on this bill. We know from practical experience that some people have real problems. Those kinds of problems may need judicial control, behavior disorders, domestic violence, protection orders, sending people for drug testing, and outsource evaluations if there are significant mental health or personality disorder problems. These are things that we cannot really do in mediation; they require judicial orders. When the case gets filed, there are people you do not know, have never met, and you do not know what kind of circumstances there are. If a party claims the other party is doing drugs, or whatever, in some cases you need judicial interventions to control the conflict.

We have had some very bad people in family court. Those are the ones who need these orders and, by opting out, we are referring to submitting an application saying this case would not be suitable for mediation. Some cases can be resolved, but sometimes it involves the judge. There is mediation with domestic violence depending on the severity, age, and a number of other factors.

Assemblyman Nelson:
For the record, we are trying to establish legislative history. Under this bill, the way you envision it, would a judge be able to grant a motion to opt out of mediation based on unequal bargaining power or lack of financial resources? Some of the letters submitted by the opponents said that the very wealthy will use the mediation process to drag it out and beat the poorer spouse down because he may not have as much money. If the court thought that was true, would the court have the discretion to allow the parties to opt out?

Robert Lueck:
They do it now. People with a lot of money will ply you with motions, requests of discovery, all the bank records, et cetera. That is one of the problems with the adversary systems: cases that are papered to death. I undoubtedly think that you have seen it in civil cases as well. We are trying to eliminate the paperwork. There is a lot less paperwork involved in mediation. One of the things that mediators do, if they are trained, is to spot these kinds of issues. Some people just want to get it over with and are willing to voluntarily give up a lot in a divorce just to get it behind them. Ultimately it is the client's choice to settle or not. If a party does not tell the judge in a motion that this is a problem, then the judge cannot address it.

Assemblyman Nelson:
But if a party does say to the judge, I do not think this mediation will work because of these financial considerations, I do not see in the bill where the judge has the discretion to let them opt out. The bill addresses things like emotional, drug abuse, et cetera. I would like the bill to say the judge has a little more discretion than what is in the bill.

Robert Lueck:
There are other provisions in statute where you can apply to the court for allowances and to be on an equal playing field. We already have law that covers that. That is up to the party to do, to bring a motion to be on a level playing field.

Assemblyman Ohrenschall:
I consider Assemblyman Nelson and Robert Lueck both superb lawyers. I will certainly take into consideration any suggestions that either of you have. I am a big believer in judicial discretion, and I am happy to take all parties' suggestions and look at the bill again.

Chairman Hansen:
Would Assemblyman Nelson's concern be addressed in section 1 where it says, "The family court, wherever practicable and appropriate, shall require . . . unless good cause is shown not to require the use of such nonadversarial or other alternative methods"?

Robert Lueck:
We have people who just want to fight and argue in court. Sometimes the parties are just so angry they want to fight, malign, and blame the other side. We are trying to address those parties who just want to fight. There has to be a good reason, not just arguing, fighting, and being difficult. This would require them to have a reason other than personal, emotional anger and a willingness to harm the other party. There has to be a good reason for opting out of the program. The great majority of lawyers do try to settle their cases. We do have a few hard-core litigators who make things worse not better.

Assemblyman Gardner:
We already do this in civil litigation, and I think it really works. However, in civil litigation there is a cap of $50,000. So if it is under $50,000, you have mandatory arbitration, if it is above that you are allowed to opt out. I do not see a cap on this bill. When you have some of these mega divorces, I would be shocked if they could be settled through mediation. Has there been thought about putting a cap on this?

Robert Lueck:
That is mixing apples and oranges. Small claims justice court jurisdiction is up to $10,000. District court jurisdiction is above that. The Nevada Court Annexed Arbitration Program is simply a trial by simpler means, for the cases in the $10,000 to $50,000 range, basically damages, which are mostly automobile accidents and some civil cases. Right now there is a practice in Las Vegas where the high-end divorce lawyers are privately mediating their cases already, rather than going to the family court with all of that expense. That is already happening. The collaborative model, for example, is a teamwork approach where each side is represented by a lawyer, there is a divorce coach, and a financial neutral. We also bring in other experts as needed, whether it be pension experts, real estate evaluators, et cetera. In the design of the system, there are certain mediators who are qualified to handle the high-end cases.

They have a lot more experience in law and finance, so they will be able to handle those cases. They are already doing it privately; we are just formalizing what is going on already.

Assemblywoman Seaman:
For those people who come to Reno and Las Vegas for a "quickie" annulment that is amicable, would that show good cause not to require mediation?

Robert Lueck:
Procedurally, here is how it would work. If you come in with a settled case and file it, you do not need the mediation. That could be an opt-out provision because the case is already settled. There are other things we will address with local rules, such as if you do not know where the other party is. If you do not know where the other spouse is, we will not require you to go to mediation. The court authority only becomes available after the case is actually in a court system and after an answer is filed.

Assemblywoman Seaman:
This says you will charge on a sliding scale. Do you have any idea what the cost may be? Do you foresee any costs that the county will have to put forth for this program?

Robert Lueck:
Family Mediation Center charges on a sliding scale. I cannot answer what that amount is. I charge a flat fee of $750 for half a day. That boils down to a pretty reasonable fee that people can afford. We have not worked through all the pricing mechanisms. In the Nevada Court Annexed Arbitration Program, we are entitled to fees of up to $1000 plus $500 for costs. The foreclosure mediation program, I think, is $400 when you apply for the program and the mediator is paid from those funds.

Assemblyman Gardner:
Regarding the unequal bargaining power, I know when you go into these mediations, sometimes we have a lot of pro se people who file family court actions. If we are requiring them to go to mediation and one side has an attorney and the other side does not, as far as I know, the mediator cannot be looking out for the person who does not have an attorney. What is going to stop the people with the attorney from pushing what may be a bad deal on the other party?

Robert Lueck:
That exists right now in a lot of cases without mediation. One side has counsel and the other side does not. What is to stop the counsel now from exploiting

his abilities to use the system unequally? With mediation, at least a mediator might be able to recognize that imbalance and address the issue.

Assemblyman Gardner:
In the family courts that I have seen, when you have that kind of unbalance, the judges have taken particular care to be very sensitive to the person who does not have counsel. I am not sure if mediators will be able to do the same thing.

Robert Lueck:
When you have thousands of cases, how do you know if an imbalance exists? It takes someone to bring it to the attention of a judge somehow. One of the things we do in mediator training is look at the imbalance and power issues. I do not think we will ever have a perfect world, but whatever we have now is second best to what we envision.

Assemblyman Wheeler:
I know that we are not a money committee, but we are forcing people to go into mediation, which is going to cost something. You mentioned that it is not much, with sliding fees. I am looking at the fiscal note from the Eighth Judicial District Court that states this is going to be $2.3 million over the next two biennium.

Robert Lueck:
That is not our policy, that is not our program, it is not our bill. That is what the Legislative Counsel Bureau came up with. Our intention is not to add employees to the county. Our intention is to set up a public/private partnership where we would have private parties doing the mediations. Just like we do in the Nevada Court Annexed Arbitration Program, all the arbitrators are private practitioners like myself, and we get paid a certain amount directly by the parties. We are not anticipating expanding that, that is not our plan, that is not what we are promoting; none of that is our idea. That is someone else's thoughts on what he thinks this bill means. That is not what we designed. No one asked me about fiscal impact or discussed it with me.

Chairman Hansen:
If this bill gets out of our Committee, Assemblyman Ohrenschall will get to present this to the Assembly Committee on Ways and Means with that fiscal note.

Assemblyman Wheeler:
When you get a fiscal note, you need to check it out.

Robert Lueck:
You were asking how this would be cheaper for the litigants. Currently, the adversary system is the most expensive system that we have for dispute resolutions. In mediation, when we are taking people out of that expensive adversary system and putting them in a non-adversarial system that is solution-based, we are looking to solve problems and settle cases intentionally. That is where the big savings is. You are not racking up a lot of legal fees in fighting with each other. You need to compare the litigation costs versus the alternative systems. One study I have seen came from David A. Hoffman of the Boston Law Collaborative System. He felt that their mediated cases were averaging $15,000 to $20,000, but their litigated cases were averaging $77,000. We have seen other studies where the attorneys' fees were much cheaper. I did a $4 million collaborative divorce case. My fees were just over $7,000. There were other people involved and other fees for financial professionals. Pauline Tesler, who is a national expert on collaborative said that the legal fees she charges are one-tenth to one-twentieth of what she would receive in an adversary litigation. That is where the savings are. There is a lot less paperwork and a much more efficient system.

Assemblyman Thompson:
When you started your presentation, you talked about helping people who are struggling and the affordability of this. What if there is an indigent party involved in the divorce, how would those fees be paid?

Robert Lueck:
There is a wide variety of programs. There is a UNLV practice program where professors monitor students who are getting experience in practicing mediation. That program is free. Judicial settlement conferences are free. The Senior Judge Settlement Program is free. I am sure there are other ways to provide this service for free. Many times these cases are relatively simple. If they are poor, they do not have much to begin with.

Assemblyman Thompson:
This is not saying that there is going to be one structured mediation program. They will be referred to any listed mediation program that can meet their needs.

Robert Lueck:
When we say mediation program, we are looking at a global view of a collection of a lot of different mediation parts to the system.

Assemblyman Nelson:
Mr. Wheeler was asking about the costs, and you responded about how much mediation saves costs for the lawyers and the parties. Is it not true that it also

indirectly saves a lot of costs to the county because otherwise you would need to hire more judges, more staff, and build more courtrooms?

Robert Lueck:
Exactly. The average salary, with benefits, for a district court judge is $200,000. The last time the Regional Justice Center was remodeled to add eight courtrooms, it cost the county $10 million. It costs almost $1 million each year to run a courtroom, because it is so elaborate. We do mediations in an ordinary conference room. All we need is a table and a few chairs.

Assemblyman Nelson:
So the fiscal note is misleading because it does not contemplate all the savings to the county. It addresses the up-front costs, but the long term savings are not being contemplated, is that true?

Robert Lueck:
That is correct.

Assemblyman Ohrenschall:
The way the program would be set up is left to local rule. The bill does not mandate how Clark County should set this up. This gives Clark County a lot of latitude. The vision that we have is not to have a vast expansion of the current program, but we can leave it open to the mediators and the pro bono mediators. I think the fiscal note is misconstruing the intent.

Chairman Hansen:
Frankly, if this had a $1 billion fiscal note and we think the policy is good, it would go forward and you could present this again in the Assembly Committee on Ways and Means to come up with the $1 billion. The fiscal part that I am interested in and that I think is important policy-wise is the potential savings for the litigants. That would be germane to the bill and to policy.

Assemblyman Elliot T. Anderson:
As I understand it now, if you have children in a family law proceeding, you have to attend mediation. There is a fee that they have to pay to work out the child custody issues during a divorce proceeding.

Robert Lueck:
The Legislature enacted mandatory custody and visitation mediations in 1997. The Family Mediation Center (FMC) in Las Vegas does that. The FMC consists of county employees working on county property. The sliding scale contributions are determined by the FMC office. However, they do not preclude

someone from participating in mediation. No one has been precluded from participating in mediation because the sliding scale had not been paid.

We would be happy if the Committee wanted to craft something that would eliminate the fiscal note. I am not sure how that is done, but that was never our intention to significantly increase any costs to Clark County.

Chairman Hansen:
Is there anyone else who would like to testify in favor of Assembly Bill 210?

Steve H. Fisher, Administrator, Division of Welfare and Supportive Services, Department of Health and Human Services:
I have provided this Committee with an amendment (Exhibit E). I am here this morning to talk about the amendment to the bill. I am here specifically representing the Child Support Enforcement Program, which we administer within our Division. The operation component of that program is administered by each county, specifically the district attorney's offices. I would also like to thank Assemblyman Ohrenschall for working with us on this amendment. [Continued to read from prepared testimony (Exhibit F).]

The intent of this proposed amendment is to exclude Title IV-D child support cases from the mandatory alternate dispute resolution, including mediation requirements. Under state and federal law, child support obligations must be calculated using a specific formula based on numeric criteria and are not subject to negotiation. Any deviation from the statutory formula must be based on specific findings of fact determined by the court.

Chairman Hansen:
Is this considered a friendly amendment?

Assemblyman Ohrenschall:
Yes, I have discussed this amendment with Mr. Fisher.

Chairman Hansen:
Is there anyone else who would like to testify in favor of this bill? Seeing no one, is there anyone who would like to testify in opposition to this bill?

Stephen R. Minagil, Private Citizen, Las Vegas, Nevada:
I am a family law practitioner. I was admitted to the Nevada Bar in 1977. I have practiced family law for 30 years in Clark County. I have lived in Clark County for 53 years. I am not here representing any group of lawyers; I am here because I read about this bill a few days ago. I am in the trenches every day. I do not think this is a good idea, and I think this slows the litigation

process in family court. I do believe it effectively sets up a tollbooth to all litigants in family court. I see that the people who benefit from this bill will be private mediators. Mediation services are available now in family law cases in Clark County. There are volunteer programs that are available, and for the cases that deal with substantial assets, most good lawyers are utilizing private mediation services as a way to resolve these issues. Most divorce cases settle with the help of competent counsel and mediation if the parties are so inclined. If the parties are intent on reaching a compromised resolution, mediation is available and utilized already in Clark County.

What I am concerned about are the type of clients that I represent, the middle class people who maybe can afford one chunk of money to get them through the process. It may be that $4,000 to $7,000 is all a middle-class person can afford for a divorce process. That is supposed to take them all the way to trial. This bill is going to cost that middle class person $2,000 to $4,000 extra to try to go through a process where he will try to mediate, try to agree. But it takes two to tango. If one party is intent on not agreeing, the other party has spent $3,000 to get prepared with his lawyer to go to a mediation process. I heard the statistics about Utah, that 50 percent of cases in required mediation settle. Those 50 percent who settle are going to settle anyway, whether they are required to go to mediation or not. It is the 50 percent that do not settle in this Utah program that I am worried about. Those are the people who had to pony up additional money to get prepared and attend a mediation process that went nowhere. Now that person has to get back in line at the courthouse to get his case adjudicated. My middle class clients want to get to the end and want a judge to decide, right or wrong, here is the deal. I see this as an unnecessary tollbooth to all litigants in family court. I have read what Mr. Willick has submitted to the Committee, and I agree with his comments.

Assemblyman Elliot T. Anderson:
You stated that it costs $3,000 to prepare for mediation. I am wondering what billable hours you are referring to. That sure seems to be an excessive amount of money to prepare for mediation.

Stephen Minagil:
My hourly fee is $300 to $350, and I am in the middle range of competent, experienced family law attorneys. If we are going to be in mediation, three or four hours times $300 is about $1,000. Perhaps there are three to four hours to prepare papers and position and meeting with the client to prepare, so maybe it is $2,000. Still, for the middle class person spending an additional $2,000, or even $1,500 is a burden.

Marshal S. Willick, Private Citizen, Las Vegas, Nevada:
I am a longstanding family law attorney in Nevada, former Chair of the Family Law Section, and former President of the Nevada Chapter of the American Academy of Matrimonial Lawyers. I am an academic on family law matters. I am a proponent of alternative dispute resolution, including mediation. In addition to the reasons set out in the written testimony that I provided (Exhibit G), I would suggest that the current proposal that is before this Committee is unnecessary because of a program that we created two years ago. We created a settlement masters program; it is in operation right now. It is entirely voluntary. It is entirely free to both the litigants and to the taxpayers. It costs absolutely nothing. It was unanimously approved by the Family Court judges and has been operating smoothly. There are 30 or 40 volunteer attorneys who agree to mediate cases and attempt to resolve them. My personal resolution rate is about 80 or 90 percent on this program. The short version is that voluntary mediation works very well. That is the reason for the statistics that Mr. Lueck gave you. I applaud that resolution whenever it can be had. Mandatory mediation of everything does not work. It really does just create a tollbooth for every litigant trying to get in the system, one more thing that he has to do and pay for in order to get to court.

In terms of results, we have not had good results in nonattorney mediation, other than custody issues. We also find very bad pension and property outcomes. I am one of the people that those folks tend to hire to clean up afterwards, after they figure out that the people dividing the pension and retirement benefits did not know what they were doing and gave inadequate and improper retirement and survivorship advice. The short version is that mandatory mediation of everything is not backed by the Family Law Section, it is not backed by the American Academy of Matrimonial Lawyers, and it is not backed by the Family Court judges. It is not a good idea. It should be rejected.

Assemblyman Gardner:
You said this bill is not backed by all those groups, do you know if they oppose this bill or have not taken a position on it?

Marshal Willick:
I do not believe they have been asked. Which is unfortunate. I can tell you that the Family Law Section is intending, at next year's Family Law Conference, to have an open debate on the floor at its annual Ely conference on all matters of suggested change to family law practice, in terms of both legislation and procedure. This would be an appropriate thing to add to that list. It would also be appropriate to submit it to the judges and see if they have a unanimous opinion one way or the other.

Chairman Hansen:
Is there anyone else who would like to testify in opposition to A.B. 210 at this time? Seeing no one, is there anyone who would like to testify in the neutral position?

Andres Moses, representing Eighth Judicial District Court:
The District Court and the Family Court Division are neutral on this bill. We did submit a fiscal note that is attached to the bill. Whether there is a cost savings, we believe it would be a policy determination by your Committee. I do know that we would incur substantial upfront costs of setting this up. That has been outlined in the explanation in the fiscal note. Obviously, an additional 3,200 cases that would go to our FMC would require us to hire more staff and rent out more facilities.

Assemblyman Nelson:
Is it not true that if you do not expand mediation you will eventually need more judges, staff, and courtrooms?

Andres Moses:
Currently, our staffing of judges is fine. Two sessions ago we had an addition of judges. Whether we can forecast a reduction of judges or staff because of this bill would not be for us to comment on. That would be more appropriate for the Legislature to determine.

Assemblyman Nelson:
The mandatory, non-binding arbitration in other district court cases, which goes up to $50,000, how has that worked out and how do you see that with respect to this bill? Has that been a failure also?

Andres Moses:
I do not have statistics on what our current mediation in the civil division is doing. I think it is doing just fine. I know you received a letter from Judge Elliott expressing her own personal opinion on this bill. I do know from speaking to other judges that there are many opinions on what the impact will be. We have a neutral position and would like to stay out of policy debates.

Chairman Hansen:
We have several other mediations that are typically nonbinding, but they are always encouraged. I know you cannot testify to the success or failure to those. My impression is that they have been extremely successful in many ways, and there is always a push to do more mediation to try to avoid litigation. Basically, get the judges in the back room with the litigants, instead of going through the formality of a trial.

Andres Moses:
I think your comments are very astute. I think that mediation is always encouraged. Litigation is very expensive. We are supportive of mediation and arbitration.

Assemblyman Ohrenschall:
I would like to thank the Committee for its time. Mr. Lueck has a couple of comments he would like to address.

Robert Lueck:
I thank the Committee for its attentive responses to this bill and for the questions that have been asked to help clarify these matters. I was a former family court judge and we have been networking this idea throughout the family court for the past three or four years. I have talked to a number of family court judges privately about the bill. Several of them favor mediation. One of the newer judges, Rebecca Burton, was on the committee that formulated this bill. This bill was circulated among the judges and the concepts have been discussed for years. We had a judges meeting on December 12, 2014, at Family Court. Judge Elliott presented; however, they chose not to decide for or against the bill. She used it as an information item only. I would add that yesterday I received an email from Judge Charles McGee, a retired Senior Judge from Washoe County Court. He is in favor and would like to expand this bill to Washoe County. We do have quite a bit of support. We have had tremendous success with these programs. It is not a tollbooth; it does not add much cost, except for a very small number of those who do not succeed, but who would get into court a lot faster if we clear out a lot of cases. Those that are contested and need to be litigated will have more opportunity to do that.

Chairman Hansen:
At this time I will close the hearing on A.B. 210. [Letters submitted but not mentioned include (Exhibit H), (Exhibit I), (Exhibit J), and (Exhibit K). I will now open the hearing Senate Bill 37.

Senate Bill 37: Authorizes GPS tracking of parolees, probationers and certain other offenders who are subject to electronic supervision. (BDR 14-354)

Natalie Wood, Chief, Division of Parole and Probation, Department of Public Safety:
I have a slide presentation I would like to go through (Exhibit L). Senate Bill 37 is electronic monitoring with Global Positioning System (GPS) tracking. If enacted, this bill will allow Parole and Probation (P&P), the Parole Board, and our courts to use the GPS system to track an offender's location when placed under electronic monitoring by the courts, Parole Board, or pending

a P&P revocation hearing. Electronic monitoring provides P&P agencies with an intermediate sanction, an alternative to sentencing an individual to jail or prison. Agencies use electronic monitoring to determine an offender's location and to track the offender's use of alcohol.

There are two basic types of technology used. One is radio frequency and the other is GPS. The nuts and bolts of this is that radio frequency is outdated. We are struggling to keep up with it. Captain Helgerman explained this to me in a manner that it would be like going into Best Buy and attempting to purchase a VCR. Yes, it can be done, but it will cost you quite a bit of money in lieu of the new technology that is out there today.

This will allow us to test an individual in real time for alcohol. Currently, under the radio frequency system that we use, we are only able to test the offender for alcohol while in the home. They do not take the unit with them. So, GPS will allow us to do real time alcohol testing in the field. There are obvious benefits to that, which speak for themselves. Vendors are currently incorporating GPS into their tracking devices more and more, and they are moving away from radio frequency. It has become more difficult to continue with radio frequency. The current statutes prevent P&P from tracking an offender outside of his home. Our Division is unable to use the latest technology to track offender movement.

There is no fiscal impact to this bill. That is probably shocking, but the reality of this is that P&P currently has house arrest. We currently have officers assigned to the house arrest unit across the state. We are using radio frequency at this time, but it is offender base-paid. Under the current contract that we have with Sentinel Offender Services, the offender pays to be placed on house arrest. We have been advised by the monitoring company that all we are doing is going to new technology. It would almost be a convenience for them to go to the new technology, and it is not going to cost the offender additional money. We already have the resources, there will be some additional training involved with the GPS, but it will not be cost-prohibitive. This is something we are currently doing. I did want to provide you with what the house arrest unit is. It looks like a clumsy sport watch (Exhibit M). You can place it either on the wrist or the ankle. It is not meant to be intrusive and brand the individual with a scarlet letter—it is very discreet. We give the offender the option of where he would like to place it. We believe this would give P&P increased opportunity to track offenders in the field. Currently P&P has 275 offenders on house arrest. Not every offender who is on house arrest would be placed on GPS tracking. The only offenders who would go on GPS monitoring would be those offenders that are either sanctioned by the courts, or their conditions are court-imposed, for example high-level sex offenders. This would allow us to monitor them to

see if they go into any exclusion zones and for us to respond rather quickly in regard to that. There have been some notable cases across the country where the GPS has proven to be very significant. The change would make it an option for the court or for the Parole Board or P&P, if the person was pending parole or probation revocation. The court and Parole Board will still have the option to limit any type of technology if they choose to do so. There is also an option not to include the GPS whatsoever, if they feel it is not pertinent to a particular case. Our current vendor offers the device that sustains itself. It is not going to increase the cost for the offender.

Assemblyman Thompson:
I am wondering, is it necessary that we have to specify whether it is a GPS device or not? This seems like a Department decision and procurement process. Is it that internally you are having some disagreements on what to use so you are asking us to make the decision for you?

David Helgerman, Lieutenant, Northern Command, Division of Parole and Probation, Department of Public Safety:
Our Attorney General had interpreted the current statute to limit us to be able to track someone only in his home. That is why we wanted this change to be able to track offenders outside of the home. There are two other *Nevada Revised Statutes* that allow us to track Tier 3 sex offenders outside of the home. We took the language from those statutes and put it into this bill so the language is the same. We believe that will enable us to use GPS like we do for the sex offenders. I believe the Attorney General reached that conclusion after several complaints and possibly a lawsuit from some of the people that we supervise.

Assemblyman Elliot T. Anderson:
I took a look at Los Angeles County's experience with GPS monitoring, and I have to say I am really scared with this technology after seeing what they have gone through. Some articles from the *Los Angeles Times* discussed how they were drowning in data because there were so many alerts and so much data that the parole and probation officers could not keep up with it all. The article states that it was causing them to lose track of when people were truly dangerous and needed to be apprehended. It has led to serious crimes being missed when alerts were ignored because of the needle-in-a-haystack problem. Recognizing Los Angeles' experience, and that you have already come to this Committee saying that you do not have enough staff to do pre-sentence investigation reports, are you going to have enough staff to deal with all this data and ensure that we do not lose those needles in a haystack?

Natalie Wood:
Los Angeles County's experience is very different. We are actually using some of the experiences that they have gone through to craft this bill and design it in such a way that we can definitely learn from those examples. It is not our intent to put every single offender who currently has a sentence with a special condition of house arrest on GPS tracking. I think that could be very overwhelming. We have decided to choose the most egregious cases, use it as an intermediate sanction if we are looking at potential revocation, and have this person in the community but on an increased, enhanced level of supervision. Remember we are only talking about 275 offenders. There is a very small percentage that we would look at placing on GPS. Geographically, offender-wise and officer-wise I do not anticipate adding any additional staff to the house arrest unit at this time. This is truly something where we are learning from other states.

Assemblyman Elliot T. Anderson:
These people are paroled and have less privacy rights because of that status; however, do you think maybe this is a little too invasive if, upon request, all this data can go to the officer if he is afraid the offender is around a crime scene? A crime could happen around all of us. When you look at a map of crimes, they happen all over the place, from day to day there are burglaries, stolen cars, they are all over the map. I feel like just being around a crime scene is a pretty broad statement.

Natalie Wood:
I think it is important to remember that these individuals are on court-imposed community supervision. They have special conditions in which the court or the Parole Board has stated they would like the person on house arrest. We are not just looking at putting individuals on GPS so we can track them near crime scenes. These are individuals who have given up some of the constitutional rights that you and I enjoy. Community supervision is a privilege. They have been afforded that privilege. It would be at the discretion of the courts or the Board to say, given the nature of your crime and your extensive criminal history, we will allow you this opportunity, but we feel we need to do some enhanced supervision as a result. The P&P does not impose searches that are arbitrary or capricious. There needs to be reasonable suspicion. If I were to come into your home and you were acting evasive, or there was reason to believe that you might be under the influence, that would trigger me to request a urinalysis or to conduct a search. We would explain to you why we are doing that. It is not meant to be harassing in nature; this is an alternative to prison or jail.

Assemblyman Elliot T. Anderson:
Would you be willing to tie in a reasonable suspicion standard into the bill?

David Helgerman:
The issue that P&P would have with tying in a reasonable suspicion standard is that the GPS is always on; it is always reporting that information. There is no way to turn it off. If we were to add in that we would only be able to review that data when we had reasonable suspicion, it would still always be there.

Assemblyman Elliot T. Anderson:
It just seems like that would be a two-birds-with-one-stone idea to stop the needle-in-a-haystack problem.

Assemblyman Araujo:
I understand there are different levels of GPS advancements. What type of GPS are you looking at? How advanced is it?

David Helgerman:
Our current vendor is Sentinel Offender Services, and it would be a device that they produce. It would be one that could have inclusion and exclusion zones so we would know when an offender left his residence or his employment; exclusion zones so we would know whether he entered an area that he had previously victimized or the residence of a victim.

Assemblyman Gardner:
I have noticed in some states there are reports of people being able to disable their GPS tracker without the state knowing. Has there been any research done to ensure they will not be able to do that?

Natalie Wood:
The actual bracelet has advanced over the years. I was previously a house arrest officer for a couple years. Offenders have tried every which way to Wednesday to take the devices apart, either while wearing it, burying it in their backyard, or actually trying to disconnect the pins. The GPS system is very sensitive. You would have to go in and try to disassemble this for the alarm to go off. At that point, the monitoring company receives that alarm and the page goes off to the on-call officer to respond to the alarm. It is water resistant; you can stand in the shower; you can work in the garden. We do set up limits in regards to where we will allow you to go before the alarms are set off. It is very advanced.

Assemblyman Ohrenschall:
My concern is whether this might intensify what can sometimes be an adversarial relationship between the person being supervised and the parole officer. Does this GPS provide video or just still photos?

David Helgerman:
No, it does not take any type of video.

Assemblyman Ohrenschall:
If one person being supervised gets the GPS and someone else does not, is that going to increase the feeling that the probation officer is out to get him, and that he is being micromanaged?

Natalie Wood:
It is not meant for everyone on house arrest. You have to distinguish the ones who are the most egregious to the ones who are not. It is truly a very viable intermediate sanction that we can offer the offender to continue to work with him rather than simply going back to court for revocation. If I were the offender on house arrest, I might think I was being overanalyzed and my probation officer is constantly monitoring me, but that is the point. It is an increased, enhanced level of supervision. It is the highest we can do and still keep you in the community.

Assemblyman Ohrenschall:
Technology is so amazing, the things our smart phones can do, and I know a lot of the technology is the same in these GPS tracking devices. My phone still drops calls and gives inaccurate information. I wonder about false positives and how they will be sifted out from true positives, in terms of being in or out of the zone. Also, what if the battery dies due to no fault of the offender?

Natalie Wood:
That is why we have an individual who is on-call to respond to those instances. I have been called out at 2 a.m. because the alarm has gone off on a wristwatch. First, we will attempt to call the offender. We will ask them, did you go out to smoke a cigarette, is it an electrical problem, or are you just testing the boundaries. Also, we can review the data to determine a consistent pattern of the individual going beyond the scope and doing it at certain times on certain days. There is a live person actually analyzing this data so we do not get false positives. Obviously it is in our best interest and the offender's best interest to look at the data.

Assemblyman Ohrenschall:
I still worry because machines make errors and humans make errors.

Assemblyman Nelson:
How long will you maintain the data? Is there a policy on purging?

David Helgerman:
The state of Nevada was fortunate enough to participate as a sourcing team member in the Western States Contracting Alliance review of electronic monitoring. That information is written into the contract as far as how long the monitoring company will retain that information. It differs from vendor to vendor.

Assemblyman O'Neill:
How often does the GPS need charging?

David Helgerman:
I believe that it needs to be charged for approximately one hour every day. That can differ from device to device. Sentinel offers two different types of devices that incorporate GPS and the charging times differ.

Assemblyman O'Neill:
What would the process be for the offender to charge the battery?

David Helgerman:
He would plug it into the wall. One of the devices is a mobile breath alcohol testing device. That is not worn on the person. That can be plugged in and set aside. The other device is on his ankle, and he would have to sit for a while to charge the battery.

Chairman Hansen:
Is there anyone here who would like to testify in favor of S.B. 37?

Kristin Erickson, representing Nevada District Attorneys' Association:
This bill and these GPS devices would provide a person who is on the verge of going to prison another opportunity to stay out of prison. It would provide him an opportunity to turn his life around while maintaining the protection of the community. We are in support of this bill.

Connie S. Bisbee, Chairman, Board of Parole Commissioners:
We are also in support of S.B. 37. Primarily our use of it would be as a condition in lieu of revocation return to prison. The other piece that would be very important to us is the fact that you have the mobile breathalyzer. There are people whom we are not the least bit concerned about being out there as long as they are sober. There is the likelihood of being able to keep someone out of prison if we know that there are mobile breathalyzers.

Chairman Hansen:
Is there anyone else who would like to testify in favor of S.B. 37? Seeing no one, I will move to the opposition. [There was no one.] Anyone here to testify in the neutral position?

Vanessa Spinazola, representing American Civil Liberties Union of Nevada:
I put a letter on the record (Exhibit N), and I would like to touch on the highlights. The American Civil Liberties Union (ACLU) absolutely supports intermediate sanctions. This is a great alternative to incarceration; that is why we are neutral on the bill. We are concerned about the breadth of the amount of data that is going to be collected. Even though parolees and probationers have a limited expectation of privacy, it is not this broad. We are also concerned about the actual functioning of the program with so much data collected. We propose an amendment which is on the first page of the letter (Exhibit N), which would apply to all nine sections where this language appears. We would like the information to not just be upon request as has been mentioned, we would like that redacted and we would like instead a standard of when there exists reasonable suspicion to believe the monitored person was involved in an incident. You heard P&P admit on the record that is what they do, they only look when there is reasonable suspicion, so it should be fairly welcomed to amend the language to reflect that. Otherwise there could be abuses if something was just upon request. You could have some sort of situation where if there is tension between a parole officer and a parolee, the officer could be requesting all sorts of information. Again, GPS tracking data is extremely private. It will show what religious meetings you went to, who you are maintaining relationships with, which bars you frequent. All of that information of your every-day, every-second whereabouts is extremely private and can tell a lot about you as a person.

We talked briefly about when the data will be purged. I understand that vendors have specific limitations on when data is purged, but it is the responsibility of the state to negotiate a contract that does not maintain excessive amounts of data. If P&P is going to respond to a sex offender who goes into a school zone, they should know that immediately. There really is no reason for the sensitive location data to be maintained by the state for any more than a few weeks. The storage fees for data are actually pretty high. It is one of the highest things about having police body cams. I think we should think about how long we retain this data for the state. In cases where there is going to be prosecution or a parole revocation hearing, obviously that is the type of data you would want to maintain for longer periods of time. There should be a policy showing the data that needs to be maintained and the data that needs to be purged almost immediately.

I have some specific observations about the language that is currently being used. It seems pretty vague to me. For example, the information is going to be available when someone is near a crime scene. There could be a crime happening in the office next door. We are all near a crime scene. Then you are immediately under suspicion for that crime, even if it is not related to your particular crime. For example, if you are a thief and there is a sex offence next door, are you immediately under suspicion for a type of crime that has no nexus for that which you are being paroled? We would encourage there be some nexus for that data to further limit it.

A prohibited area is mentioned in the bill. I am guessing that may refer to the school zones and what they are trying to track, but it is very unclear to me. There are lots of prohibited areas. I am not permitted to go up to the dais, that is prohibited. There are dangerous construction sites that are prohibited. Many things are "prohibited," and it is not really clear in the language of the bill what that would be.

Finally, there is the language regarding the departure from a specified geographic location. I really do not know what that means. If I get up from this seat and I go over to there, I have departed from a specific geographic location and moved to another one. That would basically encompass all movements that anyone makes. I would like to note that I did the math on this. If you are supervising 10 people for 6 months, that is 1,800 days of information, which is 43,200 hours of data tracking information. That is a lot for only ten people. Under the current language of the bill, if we are permitting all of that data to be tracked, stored, and not purged, that is a lot of information, and then we have that needle-in-a-haystack problem.

I suggest these amendments to narrow down getting at who is really conducting violations. We talked about the Los Angeles County situation where the probation officers where basically getting 1,000 emails a day, and they just ignored all of them, because they were getting tips on basically every movement that all the parolees made; therefore, they just did not check anything, which is completely counterintuitive to the program.

Finally, I know this is a policy committee, but I talk about costs because, as has been stated, these costs will be handed off to the parolees and probationers. Particularly parolees. These are people with criminal records who may already have a difficult time finding a job. I think we need to be really careful about the cost of implementation. I have seen, across the country, this does cost money. I do not want to see it passed on to these people. An offender may be in a situation where he is in front of a judge and looking at getting out and having to pay something versus staying incarcerated. He may not have a choice about

getting out and having to pay an excessive amount to be monitored, even though we would want him to make that choice. We want the opportunity to learn from those mistakes in other areas, narrow down this data, make sure the state does not collect it on everybody, and hopefully consider these amendments.

Sean B. Sullivan, Deputy Public Defender, Washoe County Public Defender:
I would like to briefly touch on the costs. The costs may be anywhere between $159 up to $200 per week. That would include the start-up costs plus $84 for the initial week and then $84 every week thereafter, which amounts to $12 per day. This may be doubled if the person is on both the GPS and the Secure Continuous Remote Alcohol Monitor (SCRAM) unit, which is the transdermal alcohol testing that was discussed previously. These costs are significant. We ask for this technology routinely. We will ask for it specifically in DUI court where there may be a DUI felony offender who may be released back into the community and the judge will put him on the SCRAM unit or the GPS unit or house arrest. In fact, for the first six months that offender may go on house arrest with additional costs such as interlock devices. We ask for it at parole revocation hearings, probation revocation hearings, and sentencings. The Washoe County Public Defender's Office does utilize this technology.

First and foremost, we would like to see our clients remain out of custody. If this is the only way someone can remain out of custody and have the judges keep him out of custody, have him gainfully employed, run his household, go to work, go to school, that is what we are all about. In addition this will allow our clients to go to mental health counselling, doctors' appointments, et cetera.

I am also concerned about the language and narrowly tailoring that language to fit our defendants' needs. Assemblyman Anderson raises a few good points. If we have two known felons on probation with a specific condition of being on parole is not to hang out with known associated felons, who happen to be at the same grocery store, coincidentally, will that cause some concern? Is there going to be data transmitted to P&P saying, we have a problem here? These are reasonable concerns that we bring forth. If it comes down to keeping our clients out of prison, out of the Washoe County jail, we will certainly do whatever it takes to narrowly tailor this language so we can have this type of technology in place.

Assemblyman Thompson:
I do have a concern about the potential of an increased cost being that we are going to a different type of device. Do we know what the difference will be from what the system costs now for parolees versus bringing on the GPS?

The last thing we want to do is make people who should not be incarcerated, incarcerated. That fills up our jails and they could be out trying to get a job.

Natalie Wood:
As I previously stated, there is no increase in costs from going from the current system to the new system; we are simply enhancing the technology of the actual device. It is easier for the monitoring company to provide us with the most up-to-date technology than to keep using the old one. We are fortunate that our contract is in place for a considerable amount of time.

Assemblyman Thompson:
How long is the contract?

Natalie Wood:
We currently have a contract for ten years.

Assemblyman Elliot T. Anderson:
In regard to prohibited zones, if you have a sex offender who has to stay away from schools, there are schools everywhere. Currently, P&P sets a route for the offender with a radio transmitter, and if he goes too far from that route that is when the alert comes. Contrast that to a GPS, which is collecting data and sending it all the time. I think we should be very careful with this because we could end up causing unintended consequences and missing truly dangerous people.

Assemblyman O'Neill:
I have questions about the data storage; the price of it and who maintains it.

Natalie Wood:
Currently and in the future it will be maintained by the monitoring company. The state contracts with Sentinel; they store and track all of the data. We would then request it if we were specifically looking at an individual who needed to be monitored.

Assemblyman O'Neill:
So there is no added cost to the state?

Natalie Wood:
Correct. Just for the record, we are the only state not using GPS.

Assemblyman O'Neill:
If you receive the information that there were two parolees in the same grocery store at the same time, would you automatically arrest them?

Natalie Wood:
Perhaps contrary to some belief, we are actually very good with our offenders. Obviously if that situation were to arise, we would investigate that. It happens all the time at Alcoholics Anonymous and Narcotics Anonymous meetings. Obviously you have to have some common sense. There is a system in place that if that scenario were to be played out, we would ask the offender where he was. If we arrested on every single violation, we simply would not have a caseload.

Assemblyman Gardner:
Ms. Spinazola, you spoke about how many hours in a six-month period. In that six-month period, how many crime scenes do you expect someone to be in? As far as I know that is when the system will go off, when someone is near a school or a park. Do you expect that to happen a lot and, if so, why are these people not in prison?

Vanessa Spinazola:
Right now the language we are most concerned about is the departure from a specified geographic location. As I stated earlier, if I get up from my seat and I move over to another chair, that is departure from a specified geographic location. If that is what we are using to trigger data requests, that is everything. I do not understand how the data company would be transmitting information from departures from specified geographic locations. That would be every time someone moves his body one foot in any direction. Because "prohibited area" is so broad, that could be anything. There are schools in neighborhoods everywhere. Is it the particular school where the offender had offended, or is it any school? Is it high school and elementary, or is it universities? Crime scene—I do not know how that is defined. Is it a crime scene when yellow tape goes up? Is it a crime scene when the 911 call is made? Is it a crime scene when there is litigation? How long is it a crime scene? I think to get at the situations where we really need to get people, the language in this bill needs to be extraordinarily redacted and tailored. If all of this is being maintained by a private company instead of the state, how do they know, based on the language of this bill, what information to share back? I respect P&P in regard to the costs, my understanding in the reading I have done is that the companies represent the new GPS as not going to cost anything more, then it ends up being an overwhelming amount of data, and months or years later, there ends up being additional costs.

Assemblyman Gardner:
As far as I know, this is for diversionary purposes for persons who would otherwise be in jail. It seems to me you are making a very good argument for

why they should not be in a diversionary program and they should be in jail. If all of this will cause so many problems, why not put them in jail?

Vanessa Spinazola:
We agree with the program. We agree with the GPS tracking. What we are concerned about is that the current language of the bill is so broad that it would notify P&P upon every movement of someone who is wearing a GPS bracelet. I understand the intent, and I am totally on board with that. What I am concerned about is the language: upon request, near a crime scene, prohibited areas. I think if we can agree to narrow that down we can get to the people who are true violators. We have not tried this program in Nevada. It has been tried in other parts of the country, and the probation officers have been overwhelmed with data. They are running off checking someone at an Alcoholics Anonymous meeting while there is a sex offender at a school because they get the same alert for both. We are concerned about public safety, particularly when we are working with a private contractor, and I think it is our responsibility to narrow this down to get at who we really need to get at.

Assemblyman Gardner:
If these people were not put on a diversionary program and they were in prison, we would be tracking every single moment of every single day. I do not see the difference.

Vanessa Spinazola:
We believe in alternatives to incarceration. If you are a threat to public safety, you should be incarcerated so that every movement is tracked. People who get this type of monitoring supervision are people who the judges and the courts have agreed are not held to that same loss of liberty. They are permitted to have community supervision; they are permitted to lead their lives in a different way. The criminal justice system has said, you get more of your constitutional rights back. If it is going to be the same amount of tracking, and yet you have to pay for it too, we may have people deciding they cannot afford it. Then we have our mass incarceration problem where we are paying $20,000 a year to incarcerate someone. We are at a point where we have to offer alternatives to people that are affordable and incentivize them to integrate back into the community and not feel like they have none of their rights back.

Chairman Hansen:
Our legal counsel, Brad Wilkerson, sent a note stating, regarding the language of the bill, the same language has been around for eight years, all the language of the bill is copied from existing law in NRS 176A.410 and NRS 213.1243.

Brian Vasek, Legislative Extern, Clark County Public Defender:
I could not have said it any better than our friend at the ACLU and Mr. Sullivan. The Clark County Public Defenders' Office is neutral to this bill for the same reasons that have been thoroughly vetted already. We are in favor of any form of technology or any diversionary program that can keep our clients out of prison. In a sense, GPS devices are an intermediate sentence rather than lesser sentences like house arrest or full imprisonment. We are in full support of anything that keeps our clients out of prison and as productive members of society. We do share the same concerns as the ACLU.

Chairman Hansen:
Apparently we are the only state that does not currently use the GPS system. Surely a lot of these issues of information storage, being overwhelmed with data have been vetted in other states. Are you aware of any problems in the other 49 states that would preclude us from introducing this type of technology?

Brian Vasek:
Unfortunately this is something I do not have any data on.

Chairman Hansen:
We do like to have data if it is not a brand new concept. It is very helpful, especially if other states have had similar laws on the books for a long time to find out if there have been significant issues that have been vetted and worked out.

Is there anyone else who would like to testify in the neutral position on S.B. 37?

Assemblyman Elliot T. Anderson:
I am looking at NRS Chapter 176A, and I do see the upon request language but I do not see the GPS language. That is where my concerns are.

Chairman Hansen:
Unfortunately, Mr. Wilkerson is not here. You will need to address that with him. I will now close this hearing and open up for public comment. Seeing no one, I have a little bit of Committee business. I have noticed everyone asks for a follow-up question. That is not necessary, you can assume that you can have one more question. This meeting is adjourned [at 9:54 a.m.].

RESPECTFULLY SUBMITTED:

_____
Nancy Davis
Committee Secretary

APPROVED BY:

_____
Assemblyman Ira Hansen, Chairman

DATE: _____

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 11, 2015 **Time of Meeting: 8 a.m.**

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 210	C	Robert Lueck	Prepared Testimony
A.B. 210	D	Jennifer L. Elliott	Letter in Support
A.B. 210	E	Steve Fisher, Division of Welfare and Supportive Services, Department of Health and Human Services	Proposed Amendment
A.B. 210	F	Steve Fisher	Prepared Testimony
A.B. 210	G	Marshal Willick	Letter in Opposition
A.B. 210	H	James Melamed	Letter in Support
A.B. 210	I	James Melamed	Resume
A.B. 210	J	Bradley Richardson	Letter in Support
A.B. 210	K	Anthony Wright	Letter in Opposition
S.B. 37	L	Natalie Wood, Chief, Division of Parole and Probation, Department of Public Safety	P&P Presentation
S.B. 37	M	Natalie Wood	GPS tracking device
S.B. 37	N	Vanessa Spinazola, ACLU	Prepared Testimony