

**MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY**

**Seventy-Eighth Session
February 18, 2015**

The Senate Committee on Judiciary was called to order by Chair Greg Brower at 1:03 p.m. on Wednesday, February 18, 2015, in Room 2134 of the Legislative Building, Carson City, Nevada. The meeting was videoconferenced to Room 4412E of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. [Exhibit A](#) is the Agenda. [Exhibit B](#) is the Attendance Roster. All exhibits are available and on file in the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Greg Brower, Chair
Senator Becky Harris, Vice Chair
Senator Michael Roberson
Senator Scott Hammond
Senator Ruben J. Kihuen
Senator Tick Segerblom
Senator Aaron D. Ford

STAFF MEMBERS PRESENT:

Patrick Guinan, Policy Analyst
Nick Anthony, Counsel
Connie Westadt, Committee Secretary
Cassandra Grieve, Committee Secretary

OTHERS PRESENT:

Natalie Wood, Chief, Division of Parole and Probation, Department of Public Safety
Andres Moses, Eighth Judicial District Court, Clark County
Kristin Erickson, Nevada District Attorneys Association
Connie S. Bisbee, Chair, State Board of Parole Commissioners
Rory Planeta
Vanessa Spinazola, American Civil Liberties Union of Nevada
David Helgerman, Lieutenant, Division of Parole and Probation, Department of Public Safety

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Sean B. Sullivan, Public Defender's Office, Washoe County
Greg Cox, Director, Department of Corrections
Kim Madris, Major, Deputy Chief, South, Division of Parole and Probation,
Department of Public Safety
Steve Yeager, Office of the Public Defender, Clark County
Stacey Shinn, Progressive Leadership Alliance of Northern Nevada; Human
Services Network
Rebekah Couper
Amanda Cuevas

Chair Brower:

The Senate Committee on Judiciary will come to order. We will open a work session on Assembly Bill (A.B.) 125.

ASSEMBLY BILL 125 (1st Reprint): Revises provisions relating to constructional defects. (BDR 3-588)

Assembly Bill 125 is the construction defect reform bill that this Committee heard jointly with the Assembly last week. This bill was referred to this Committee earlier today. The work session document ([Exhibit C](#)) shows an amendment made by the Assembly in section 8, subsection (2), paragraph (d), removing the words "signed under penalty of perjury." This change reflects a concern raised by some members of the Joint Committee. I have reviewed the bill and believe it ready to be processed.

SENATOR HARRIS MOVED TO DO PASS A.B. 125.

SENATOR HAMMOND SECONDED THE MOTION.

Senator Ford:

This action is disturbing—there is no reason to rush through a work session on this amendment. This has been an obliterative process from both sides over the course of years, but it has not been an obliterative process for this Committee. The meeting agenda had neither a work session nor this bill. There is no reason to rush this bill through this Committee. Negotiations on A.B. 125 are still ongoing as we attempt to make this homeowner rejection act more palatable for those who may be subjected to it.

It is unfortunate to learn about this move to vote upon walking into this Committee room just now. Assembly Bill 125 is controversial, and adequate notice was not given for the hearing on it last week, most likely for the purposes of limiting attendance by homeowners—the very people who will be most affected by the repercussions of this bill.

To have a work session on a bill without adequate vetting and discussion among Committee members is a problem. I protest the motion, and I hope this does not set the precedent for the Legislative Session.

Senator Kihuen:

I echo Senator Ford's sentiment. Where is the transparency in this process? Where is the opportunity for our constituents to come here and testify either in support or against this bill?

We are here for our constituents. This motion appears to give consideration to big special interests over those of our constituents. I would have loved to have an opportunity to call up a few of the homeowners in my district in Las Vegas to testify. The fact that we just got this bill handed to us minutes ago does a direct disservice to our constituents in Las Vegas and throughout Nevada. That is not how things should be done in the Legislature, Chair Brower. Nevada is better than this. This Committee is better than that.

Chair Brower:

I want to remind the Committee and the public that this bill has been a work in progress for months, if not years—in fact it has been years. Assembly Bill 125 was heard, questions were asked and debates were had at a Joint Committee meeting between the Assembly and the Senate last week. A consensus among the majority of this Committee has this bill ready to process. We have a motion and a second and I will now call for a vote.

THE MOTION CARRIED. (SENATORS FORD, KIHUEN AND SEGERBLOM VOTED NO.)

* * * * *

Chair Brower:

The work session is concluded. I will open the hearing with Senate Bill (S.B.) 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 presentation to explain how the Global Positioning System (GPS) is a preferred technology for the Division of Parole and Probation (P&P) ([Exhibit D](#)).

As an intermediate sanction on offenders in the community, GPS will allow P&P, the State Board of Parole Commissioners and the courts to track an offender's location when placed under electronic monitoring.

Electronic monitoring provides an alternative to jail or prison. Agencies use electronic monitoring to determine an offender's location and track the offender's use of alcohol.

Offenders placed under house arrest are only allowed to be electronically tracked when they come into and leave the residence. When offenders go out into the community or when they are employed, we are unable to track them or do alcohol breath testing. There are inconsistencies with that limited amount of monitoring. If an offender is at work for 10 hours, there is potential that electronic monitoring could be abused.

The two types of technology used in any electronic monitoring device are radio-frequency identification (RFID) and GPS. The RFID, or radio frequency monitoring, is outdated. We want to update our technology by using GPS. The monitoring company has advised that the fiscal cost to upgrade—offenders pay to be placed under house arrest with electronic monitoring—is not passed on to the offender. Offenders pay the same price using GPS devices as they did using radio-frequency devices.

We brought an example of the GPS device to show its smallness as the size of a large wristwatch that the defendant can choose to wear on the wrist or ankle. By allowing defendants to choose where they place the device, more discretion is allowed when they are in the community; they are not labelled or readily recognized as offenders.

Using a GPS device would allow us to actively track defendants within the community in real time. Statewide, P&P has 247 offenders actively under house

arrest. Of the 247 offenders under house arrest, 75 are inmates from the Department of Corrections (DOC). Other participants are either probationers or parolees, also from the DOC.

Senator Hammond:

Please clarify the fiscal cost of the system update. Will offenders bear the cost?

Ms. Wood:

Sentinel Offender Services, our contracted provider, indicates no additional costs. Moving from radio frequency to GPS simply updates our equipment. Offenders pay the costs associated with being under house arrest; we would merely upgrade the system.

Andres Moses (Eighth Judicial District Court, Clark County):

The Court supports S.B. 37. The bill modernizes the language of the statute. It also gives the judges more comfort when using house arrest by having updated systems track defendants.

Kristin Erickson (Nevada District Attorneys Association):

Senate Bill 37 gives us an excellent option for defendants who are on the border of going to prison or being placed on probation. This upgrade will enable the judge to grant probation and still ensure community protection.

Connie S. Bisbee (Chair, State Board of Parole Commissioners):

We support S.B. 37. We use house arrest and monitoring alternatives as conditions for parole and probation. We support an upgrade to this system so there will be a better ability to monitor inmates.

Chair Brower:

Transferring to GPS is a long overdue technology upgrade to the system.

Ms. Bisbee:

Our only concern would be an increase in cost, but no fiscal note is attached to the bill. Using the GPS system is just a better product all around.

Rory Planeta:

I am the retired Chief of the Carson City Department of Alternative Sentencing, and I support S.B. 37. I used GPS technology while I was Chief and found it to be an effective way to monitor people. Exclusion and inclusion zones can be

set, limiting where people are allowed to travel or not, such as bars or casinos, etc.

Vanessa Spinazola (American Civil Liberties Union of Nevada):

The ACLU is neutral to S.B. 37. We support alternatives to incarceration; however, this bill is about more than a simple upgrade in technology. With GPS tracking comes knowledge of every single movement an offender makes, and we have privacy concerns with that. We submitted a letter that contains a proposed amendment ([Exhibit E](#)).

Senate Bill 37 states that reports on the location of parolees or probationers are available upon request under certain conditions. We would like to change the words “upon request,” which appear throughout the bill, to language that emphasizes when a reasonable suspicion exists to believe that the monitored person was involved in an incident.

We agree that parolees and probationers have a diminished expectation of privacy, but we do not believe it allows for Parole and Probation to know their every single move. This is of a particular concern for those people who are on extended probation and parole for a year or 2 years.

We are also unsure about the following phrases in the bill: “near ... a crime scene,” “prohibited area” and “departure from a specified geographic location.” The conditions under which a report would be produced include being near a crime scene; “near” could be interpreted to be 20 feet or 200 miles, depending on one’s conception.

It is also not clear if the phrase “prohibited area” is in terms of an offender’s conditions of parole or probation or if that is a generally prohibited area, like a construction site.

The phrase “departure from a specified geographic location” may mean departure from residential confinement, in which case this language would not be applicable in sections 1 and 6. It may mean departure from locations prohibited in terms of probation or parole, or—if merely departure from one place to another—this language swallows the rule and includes all location tracking information.

Even though no fiscal note accompanies this bill, my letter, [Exhibit E](#), notes that there may be unintended costs. The *Los Angeles Times* published an article last week relating to the unplanned costs experienced by Los Angeles County in employing a GPS tracking system. Los Angeles has one of the largest probation departments in the Country. The department employed a GPS tracking system with the thought it would not cost anything. The County found that the program ended up costing millions of dollars because the data needed to be managed. Those types of costs would be passed on to the offender.

Senator Ford:

When I first read this bill, I had a visceral reaction. I could not describe my issue, but you have done a good job articulating an issue relating to privacy. Could you clarify a parolee's expectation of privacy, so the bill language reflects that standard?

Ms. Spinazola:

A bill presented in the 77th Session regarded placing a GPS tracking device under a car. Beyond that, the idea of using GPS tracking for parolees and probationers is relatively new. The article I quoted in my letter, [Exhibit E](#), was only from a few days ago. I cannot say there is specific legal guidance regarding this particular bill.

Senator Ford:

There is a need for the technology, but my constituents and I want assurance that this bill does not unduly invade the privacy of parolees, who have some rights. I want more information on that if you have it.

Chair Brower:

I remind the Committee that the bill Ms. Spinazola referred to had nothing to do with probationers. The bill discussed during the 77th Session had to do with whether it was a violation of the Fourth Amendment of the United States Constitution to allow law enforcement to attach GPS devices to one's vehicle. Probationers and parolees are people in a different category with respect to the Fourth Amendment and privacy rights.

Ms. Wood:

Senator Ford's question is a good one; I was researching a response to this after reading the ACLU's letter. Individuals placed under electronic monitoring by the Parole Board or court order are supervised by P&P. The P&P does not

conduct searches either arbitrarily or capriciously, and its officers are not meant to harass. The search clause is imposed by the sentencing court.

Parolees and probationers do waive a certain right to search and seizure, but the intent is not for a P&P officer to go out and harass offenders. The intent is to ensure offenders comply with the conditions of their supervision. The bill from the 77th Session referenced earlier regarded civilians—individuals who are not under supervision by the State. Senate Bill 37 strictly deals with offenders who have certain special conditions imposed legally by the courts.

Senator Ford:

I do appreciate the difference, but I am still concerned about the language in the bill. As Ms. Spinazola pointed out, the phrase “near ... a crime scene” seems to be amorphous and subjective. Would you be amenable to an amendment to address that issue?

I do not practice law in this area, and I do not know if a prohibitive area or a specific geographic location is defined elsewhere in regulations. I am still concerned about how this may infringe upon even the minimized rights of privacy that parolees have. Mr. Chair, could Committee Counsel provide information on that issue?

Chair Brower:

I would like the Committee to remember that P&P, by virtue of a probationer’s voluntary agreement, can follow offenders around 24 hours a day, 7 days a week (24/7). They can do this in order to ensure that terms of an offender’s release are not violated with regard to not being near a crime scene, in a prohibitive area or in a specific geographic location. This bill simply provides a technology shortcut to that effort.

It is impossible to follow offenders around 24/7; we do not have the resources. We have the authority, though, to do so. It would neither be a Fourth Amendment violation, nor a privacy violation. Ms. Wood, do you have a more expert answer to Senator Ford’s question?

Ms. Wood:

We absolutely can follow an offender minute for minute, hour for hour, throughout the day. Obviously, we do not have the resources for this, and electronic monitoring is a tool that allows us to legally track individuals.

Chair Brower:

Can P&P officers also invite themselves into an offender's home, unannounced, at any time?

Ms. Wood:

We can, and we do.

Senator Ford:

Chair Brower, Ms. Wood, that is helpful. I am not obverse to what you want to accomplish here. I still would like to see a document that details the constitutional parameters of what privacy rights parolees have—it does not sound like they have many, if you can invite yourself into their homes. I would like to see an analysis that I can deliberate upon as we think about this bill.

Chair Brower:

The Committee can take that up with Committee staff later. Does P&P have something available to share with the Committee regarding Senator Ford's concerns?

Ms. Wood:

Yes, I defer to Lieutenant David Helgerman, who has done extensive research on this matter and can answer these questions more clearly.

Chair Brower:

I reiterate to Committee that we are talking about citizens who have volunteered—who have agreed to subject themselves—to these quite onerous realities in lieu of remaining incarcerated. It is a Hobson's choice, to be sure, to remain incarcerated or be placed under electronic monitoring, but it is still a choice.

David Helgerman (Lieutenant, Division of Parole and Probation, Department of Public Safety):

Language in the bill was chosen because two sections of *Nevada Revised Statute* (NRS)—NRS 176A.410, subsection 2, paragraph (b) and NRS 213.1255, subsection 1, paragraph (b)—contain that same language regarding a crime scene or specific areas. The language was chosen because, with GPS technology, inclusion and exclusion zones can be established. With radio frequency monitoring, we only know when offenders are within a certain distance of the devices in their homes.

If P&P wants to know when offenders arrive at or leave from work, in addition to when they arrive at or leave from home, inclusion or exclusion zones can be established with GPS. The bill's language was specific to that and the wording was already established in the two statutes I mentioned. With radio-frequency technology, P&P can only detect when an offender leaves and returns to a specific residence.

Ms. Spinazola:

I submit that NRS language, like the technology, is also outdated, and if the technology is being updated, NRS language should also be updated.

Parole and Probation may follow offenders around 24 hours a day, but that is a different set of knowledge than a data bank that includes every single movement an offender has made for 2 years. No human brain can amass the amount of intimate information about an offender the way a database can.

Even though an offender has a diminished expectation of privacy, this bill permits P&P access to information beyond what a parole officer could manage in 24 hours. That is why we are neutral to this bill. We agree that it is a necessary upgrade to the technology, but we also have privacy concerns.

Senator Ford:

That is my same concern. Hopefully, the Committee will hear bills this Session that will address reintegrating felons into society, and one of my concerns is barricades put up in that regard. I look at this bill through lens to make certain we get offenders back into society and incentivize them without overly restricting them.

I want to be certain we monitor those who volunteer to be monitored while affording them opportunities to reintegrate into society.

Senator Hammond:

Ms. Spinazola, you alluded to the cost. You testified about a situation in California. Are you talking about the setup cost of this system? Could you say what would it be per offender?

Ms. Spinazola:

I believe P&P stated that the program has about 150 people, but if this bill leads to an improvement of the probation system, then more people will be put on

parole and probation, and the number of those in the program will go up. I have read that the cost is around \$25 to \$35 a day.

I understand that data management, not the setup, is costly. Staff will be needed to access and process the data and then to respond to requests.

When the system was in place in Los Angeles County, probation officers received approximately 1,000 email alerts a day under conditions similar to what may happen with S.B. 37. If bill language regarding “near” remains undefined, we would be in the same position as those officers in Los Angeles. The Los Angeles officers were so overwhelmed, they ended up ignoring the emails instead of following up on them.

Senator Hammond:

You testified you appreciate the bill and were neutral because you would like to see less incarceration. Then you testified that the number of people in the program would most likely increase. Fewer people incarcerated would reduce the amount of money we spend on prisons that we could then spend on the P&P program.

Ms. Spinazola:

That is correct, particularly if the costs are attributed to the offender.

Sean B. Sullivan (Public Defender’s Office, Washoe County):

We are neutral to S.B. 37. I use these arguments when making requests to district attorneys, justices and district courts to have offenders released from incarceration and put on probation with this type of technology tracking them.

The average start-up cost for an offender in Washoe County is usually \$100 to \$200, then \$15 to \$25 per day. I warn my clients that these costs will be passed on to them, but I would rather have my clients out working, gainfully employed and living with their families, which is critical to their success in completing their sentencing.

I share the same concerns as Chair Brower and Senator Ford, and I appreciate the debate. My clients do not have a full panoply of constitutional rights while on parole or probation, but I want to make sure my clients comply with the terms of their parole and probation, so that is why we are neutral. I would be happy to work with the ACLU or P&P on any further narrowing of the terms.

Chair Brower:

Thank you for acknowledging that the system cannot work without effective release. There is not enough space in our jails—this is the reality of the system. Like you, I have asked judges for release. It is the right decision and, in many cases, the only practical decision given our resource limitations. We have to do it right, and this technology moves us in the right direction.

We will close the hearing on S.B. 37 and open the hearing on S.B. 136.

SENATE BILL 136: Provides for the continuation of the diversion program that allows certain probation violators to receive treatment for alcohol or drug abuse or mental illness in lieu of revocation of probation. (BDR 14-162)

Greg Cox (Director, Department of Corrections):

With S.B. 136, we ask for the continuation of the diversionary program set to expire July 1. This program takes place in Las Vegas at the Casa Grande Transitional Center. Senators Segerblom, Kihuen and Ford as well as Secretary of State Barbara Cegavske, former Senator Cegavske, supported this program.

This program allows offenders the opportunity to avoid jail or prison. Some offenders will not take the diversionary sentencing opportunity and return to jail. Having this program is an effort on the part of the DOC and our State to divert offenders from jail and prison.

There was some discussion in the 77th Session about expanding this program. Although no fiscal note is attached to S.B. 136 we need to look at expanding this program in the 79th Session. Running the program takes up a considerable amount of time for District Judge Linda Marie Bell and the Eighth Judicial District. With the opening of the Northern Nevada Transitional Housing Center in Reno-Sparks, we intend to expand this program to northern Nevada.

Chair Brower:

A visit to a drug court or mental health court in counties that have them will show anyone the importance of this critical diversionary program.

Kim Madris (Major, Deputy Chief, South, Division of Parole and Probation, Department of Public Safety):

The Opportunity for Probation with Enforcement in Nevada (OPEN) program began in 2010. It is a joint venture between the Department of Corrections, the

Eighth Judicial Court and the Division of Parole and Probation. The OPEN program bases itself on Hawaii's Opportunity Probation with Enforcement program. We began the OPEN program under the supervision of District Judge Jackie Glass from January 2010 to September 2012. At that time, P&P was responsible for reviewing and referring offenders for acceptance to the program.

During this time, there was a total of 58 participants. The program graduated 31 participants, revoked 15 and discharged 12 others. September 2012 and September 2013 was a time of transition, and the program lacked referrals.

District Judge Bell took over the program in September 2013 and made some significant changes and improvements. Since September 2013, the program has had 88 participants, 26 revocations and 15 graduations. It now has 55 active participants. Guidelines have changed since District Judge Bell took over the program. Instead of P&P being responsible for reviewing the files for referrals, judges in the Eighth Judicial District Court participate and refer cases to the program.

Under District Judge Bell, the criteria loosened to get into the program. To be referred, offenders must be male, between the ages of 18 to 26 and have 1 year of probation remaining on their terms. We now allow higher-risk offenders into the program. Good time credits are subject to be rescinded by the referring court or by District Judge Bell. We accept individuals with limited medical issues. Offenders of violent crimes and those with criminal histories are reviewed on a case-by-case basis. Gang members are allowed into the program on a case-by-case basis. We neither allow sex offenders into the program nor have the ability to accept individuals with mental health issues.

Prior to acceptance into the OPEN program, an offender and his counsel must submit a specialty court application. District Judge Bell makes the final determination of whether the individual is eligible. Offenders remain in custody until given a date to appear before District Judge Bell for an application review and determination whether the offender is accepted into the program. Denied individuals are referred back to their sentencing judges.

If an individual is accepted, an orientation is completed by District Judge Bell in addition to an orientation completed by the P&P officer assigned to the case. The OPEN program involves high-intensity supervision where participants

receive swift, predictable and immediate sanctions, and an array of sanctions can be given to the offender.

Senator Ford:

This program speaks to reintegrating people back into society. This is criminal justice reform at its finest.

Senator Hammond:

What kind of facility is Casa Grande?

Mr. Cox:

It is a transitional housing center located on 3955 West Russell Road in Las Vegas.

Ms. Erickson:

The Nevada District Attorneys Association supports S.B. 136.

Steve Yeager (Office of the Public Defender, Clark County):

We support S.B. 136. The OPEN program is a great program. Over the past year, I have had four clients go in this program. These are typically individuals who are brought back before the court because they are having trouble on probation—not major trouble, but having trouble checking in or going to counseling. These individuals are not taking probation seriously.

Alternative sentencing gives the court the opportunity to have some sanctions and not put offenders back in prison or jail. Of the four individuals whom I have in the program, none have been revoked. I do not believe any of them have graduated yet, but they are still in the program, getting back on the right track. This bill is good policy and makes good sense fiscally. We support the continuation and expansion of this program.

Mr. Sullivan:

The Public Defender's Office of Washoe County supports S.B. 136 and any bill that deals with specialty courts or diversionary programs. I wish we had a Casa Grande-style program up north where we have other avenues rather than incarceration or revocation. We have in-patient treatment or boot camp. This morning, Mr. Yeager walked me through the entire process from start to finish, and the Casa Grande program sounds wonderful.

Mr. Moses:

I speak on behalf of District Judge Bell when I express support for S.B. 136. It is a wonderful partnership between P&P, DOC and the Eighth Judicial District Court, and we would like to see it continue. Judges take the position that the program has been a good resource for defendants who cannot manage typical probation. The judges have found the program to be successful.

Stacey Shinn (Progressive Leadership Alliance of Northern Nevada; Human Services Network):

I have submitted a letter from the Human Services Network supporting S.B. 136 ([Exhibit F](#)).

We support keeping and expanding of alternatives to incarceration for individuals who pose little or no threat to our communities. At a time when we are worried about funding and supporting the State budget, we should utilize more cost-effective strategies. As a social worker who has worked as a treatment provider, I can attest that we cost a fraction of incarceration.

Additionally, time spent in prison increases a person's likelihood of committing future crimes; therefore, this bill helps reduce prison reentry rates and money toward our corrections budget. Senate Bill 136 is also a positive bill when viewed through a racial equity lens because people of color are incarcerated at a disproportionate rate in Nevada and across our Country.

Rebekah Couper:

I am a student at University Nevada, Reno (UNR), majoring in social work. I am in long-term recovery from drug and alcohol addiction. I was given the chance to go into an alternative sentencing program instead of going to prison. I went through a drug court program. It helped me tremendously. I am in school, I am getting my degree and giving back to society. I am here to testify that alternative sentencing works. I support this bill.

Chair Brower:

I have witnessed drug court and graduation from drug court. It is a moving experience. Congratulations, Ms. Couper, and thank you for coming here to share your experience with us.

Amanda Cuevas:

I am also a student at UNR majoring in social work and a graduate of a drug court program. I received alternative sentencing instead of being sent to prison, and it completely changed my life. The woman sitting in front of you today is not the woman who went into the program. I am employable today due to the program that taught me basic skills of how to be a good citizen in this community. I support this bill.

Ms. Spinazola:

The ACLU of Nevada also supports this bill.

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Chair Brower:

As there are no further comments from the Committee or the public, I will close the hearing of the Senate Committee on Judiciary at 1:52 p.m.

RESPECTFULLY SUBMITTED:

Cassandra Grieve,
Committee Secretary

APPROVED BY:

Senator Greg Brower, Chair

DATE: _____

EXHIBIT SUMMARY				
Bill	Exhibit		Witness or Agency	Description
	A	1		Agenda
	B	4		Attendance Roster
A.B. 125	C	3	Patrick Guinan	Work Session Document
S.B. 37	D	4	Division of Parole and Probation	Electronic Monitoring with GPS
S.B. 37	E	3	American Civil Liberties Union of Nevada	Letter with Proposed Amendment
S.B. 136	F	1	Human Services Network	Letter in Support