

Members

Sen. Luke Kenley, Chairperson
Sen. David Ford
Sen. David Long
Sen. Glenn Howard
Sen. Timothy Lanane
Sen. Samuel Smith, Jr.
Rep. Jeb Bardon
Rep. William Crawford
Rep. Brian Hasler
Rep. Ralph Foley
Rep. Mary Kay Budak
Rep. Jeff Thompson



INTERIM STUDY COMMITTEE ON JUVENILE LAW AND RESTORATIVE JUSTICE

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MEETING MINUTES¹

Meeting Date: August 17, 2000
Meeting Time: 9:00 A.M.
Meeting Place: State House, 200 W. Washington
St., Senate Chambers
Meeting City: Indianapolis, Indiana
Meeting Number: 1

Members Present: Sen. Luke Kenley, Chairperson; Sen. David Ford; Sen. Timothy Lanane; Rep. Jeb Bardon; Rep. William Crawford; Rep. Ralph Foley; Rep. Mary Kay Budak.

Members Absent: Sen. David Long; Sen. Glenn Howard; Sen. Samuel Smith, Jr.; Rep. Brian Hasler; Rep. Jeff Thompson.

I. CALL TO ORDER

Chair Kenley introduced the members of the Committee and called the Committee to order.

II. PANEL DISCUSSION OF INDIANA'S CURFEW LAW

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Chair Kenley introduced the following members of the panel and moderated the discussion:

- ◆ The Honorable Viola Taliaferro
Monroe Circuit Court -
Division 7
- ◆ Chief Dick Russell
Noblesville Police Chief
- ◆ Mr. J.D. Lux
IN Attorney General Liaison
- ◆ Mr. Scott Chinn
Indianapolis Corporation Counsel
- ◆ Sheriff Jack Cottey
Marion County Sheriff
- ◆ Mr. Steve Johnson
Prosecuting Attorney's Counsel
- ◆ Chief Jerry Barker
Indianapolis Police Chief

Mr. Steve Johnson discussed Judge Tinder's decision in Hodgkins v. Goldsmith, Cause No. IP99-1528-C-T/G, which struck down Indiana's curfew law as unconstitutional. Mr. Johnson stated that Judge Tinder addressed three issues in the Hodgkins case as follows:

(1) Indiana's curfew law violated a child's First Amendment rights to free speech and assembly. For example, the Hodgkins court discussed the fact that the curfew law would not permit a child to attend certain nighttime political or athletic events even if parental permission has been obtained.

(2) The issue of whether Indiana's curfew law invaded the rights of parents to raise their children was raised. The Hodgkins court declined to address this issue.

(3) Marion County's practice of conducting warrantless and suspicionless arrests of children who commit curfew violations impinged upon their Fourth Amendment rights.

Mr. Johnson noted that the Hodgkins case stated that curfew laws are valid but that Indiana's curfew law was too broad. The case further stated that an exception for emancipated minors needs to be drafted.

Judge Viola Taliaferro commented that Indiana lawmakers should feel comfortable passing a curfew law if enough exceptions are made so that children can do normal things. Judge Taliaferro stated that there are many curfew violations in Monroe County and often the kids who violate curfew are not being properly supervised by their parents and would have likely been in trouble anyway. Judge Taliaferro further stated that a curfew violation seldom involves a child who is merely out too late. A curfew law is necessary for the protection of the child.

Sheriff Jack Cottey stated that in 1995 the sheriff's department started conducting organized curfew sweeps. These curfew sweeps were organized with the assistance of Marion County Juvenile Judge James Payne. Sheriff Cottey stated that during the sweeps the curfew violators were not taken to juvenile centers but instead were

taken to one of two churches. At the churches there were intake workers who interviewed the children and contacted their parents. Some of these children didn't want to go back home, and some did not know where their parents were. During these curfew sweeps the sheriffs would administer drug tests and found that approximately fifty percent of the children tested positive for cocaine, marijuana, or alcohol. Over 200 children were arrested each time a curfew sweep was conducted. The children who violated the curfew law were often those with no structure or discipline at home.

Chief Dick Russell of Noblesville stated that curfew problems are not unique to Indianapolis. Chief Russell stated that children come into Hamilton County from other counties because they have cars. Chief Russell stated that his police force put out bicycle patrols and in one sweep found 11 juveniles, most of whom had left the house after dark when their parents thought they were at home in bed. Many parents want the enforcement of a curfew law. Chief Russell stated that it is extremely important to have a curfew law, and the police find many repeat curfew violators.

Chief Jerry Barker of Indianapolis stated that the Indianapolis Police Department (IPD) has conducted the same curfew sweeps as the Marion County Sheriff's Department, and IPD finds the same problems as the sheriff's department. Chief Barker stated that IPD makes very few arrests for curfew violations, because of the length of time that an officer would be unavailable for patrol. Chief Barker noted that good children can use curfews as an excuse for good behavior.

Mr. Scott Chinn informed the Committee that the City of Indianapolis is appealing the Hodgkins case to the Seventh Circuit Court of Appeals in Chicago. An Indianapolis ordinance is in the process of being passed. It is similar to the recently stricken state law but adds one exception to meet the concerns set forth in the Hodgkins decision. Mr. Chin stated that the following provision was added to the proposed city ordinance: the curfew restrictions do not apply to a child who is, "with the consent of the child's parent, guardian, or custodian, either participating in, going to, or returning from *an expressive, religious, or associational activity protected by either federal or state law, including but not limited to the free exercise of religion, freedom of speech, and the right of assembly.*" (Emphasis added) (See Exhibit A) Mr. Chinn stated that the United States Supreme Court has never addressed the curfew laws, and the federal court of appeals decisions vary and contain all kinds of exceptions. Mr. Chinn stated that it is hard to figure out what would be an acceptable curfew law. Mr. Chinn stated that the Indiana Civil Liberties Union wants the law to allow children to go out beyond the hours of curfew if they have parental consent. Mr. Chin also commented that the Hodgkins court stated that governments have good reason to have curfews, but there must be some basis of suspicion for testing before drug tests are administered to children who violate curfew laws.

Mr. J.D. Lux explained that Shelbyville recently passed a curfew ordinance (see Exhibit B). The Shelbyville ordinance carves out exceptions based on a Charlottesville, Virginia, ordinance which is based on a Dallas, Texas, ordinance. The Charlottesville ordinance withstood a challenge in federal appeals court. These ordinances provide, among other things, that if a juvenile is exercising his or her First Amendment rights, the curfew restrictions do not apply.

III. QUESTION & ANSWER PERIOD/COMMITTEE DISCUSSION

Representative Crawford asked whether IPD sees a lot of prostitution involved in curfew violations. Chief Barker responded that they do not and that the problem is adults who prey on children sexually.

Chair Kenley questioned whether children have constitutional rights in the context of a curfew law. Mr. J.D. Lux responded that minors do not have same level of constitutional rights as adults, and the Hodgkins case addressed this issue. (Note from Legislative Services Agency: The Hodgkins court stated that the constitutional rights of children cannot be equated with those of adults due to such matters as the inability of a child to make critical decisions in an informed, mature manner and the importance of the parental role in child rearing. The Hodgkins court further stated that although children are generally protected by the same constitutional guarantees against governmental deprivations as are adults, the State is entitled to adjust its legal system to account for children's vulnerability and their needs for concern, sympathy, and parental attention.)

Senator Lanane commented on the difficulty of drafting a statute that takes the First Amendment problem described in the Hodgkins case into consideration. Senator Lanane suggested a curfew law that allows children to be out past curfew if they have parental consent. Senator Lanane commented that a curfew statute is needed because we cannot merely rely on local units because of their limited enforcement abilities.

Representative Crawford asked if Marion County's proposed ordinance makes an exception for a parent who has a handicap and wants the child to run an errand. Mr. Chinn stated that there is not this type of exception in the Marion County ordinance.

Senator Ford raised the issue of whether we need to enact a new curfew statute before the Court of Appeals rules in the Hodgkins case. The Committee discussed whether passing a new curfew statute would render the appellate case moot. The Committee decided to pass a temporary curfew statute that would only remain in effect for approximately one year.

Mr. Eric Miller of Advance America stated that enacting a state curfew statute is critical. The curfew statute is needed for both the protection of the child and the community. Mr. Miller stated that there should not be so many exceptions to a curfew law that the curfew becomes meaningless.

Ms. Michelle Milliken, Director of Public Policy, McCoy, Inc., commented about the increase in the number of children out at 2 a.m. since Indiana's curfew statute has been struck down. Ms. Milliken also stressed that the curfew statute did not mention drug testing and that drug testing needs to be continued.

IV. IDEAS FOR FUTURE MEETINGS

The Committee discussed whether they should introduce a curfew bill. Most members agreed that a bill is needed and that the local authorities are limited as to

how much can be done to enforce an ordinance. Senators Ford and Lanane, both attorneys, agreed to work on curfew legislation to present to the full Committee at the next meeting.

Judge Taliaferro stated that juvenile crime is going down in every area except that of lethal weapons. Judge Taliaferro stated that fewer children should go to adult court, and we need to examine having more reform and restorative justice efforts in the juvenile system. Judge Taliaferro suggested that the Committee should look at rehabilitation and the role of parents in children's lives. Judge Taliaferro further stated that the Committee needs to look at trends and consider possibilities for change very carefully instead of just reacting.

Mr. Steve Johnson stated that while prosecutors are satisfied with the juvenile code overall, there is a consensus that there should be some type of blended tier system for children. Mr. Johnson stated that the third tier would provide intermediate sanctions between the juvenile and the adult system. Mr. Johnson stated that a statutory change and additional funding would be needed to accomplish this change.

Senator David Ford suggested that perhaps the third tier of the juvenile system should be comprised of youthful offenders who range in age from 18 to 24 years and who lack maturity. Mr. Steve Johnson responded that many of these children are already in community corrections.

Chair Kenley stated that he is somewhat concerned about making widespread juvenile code revisions without more input from nonlegislators such as juvenile judges and lawyers.

Mr. Jeff Bercovitz, Director of Juvenile and Probation Services, stated that the juvenile judges considered the issue of rewriting the juvenile code a couple of years ago. Mr. Bercovitz stated that the judges believe that revisions are needed but without proper funding and staff, a redraft of the juvenile code is not going to happen. Chair Kenley stated that if the judges can outline what needs to be changed, then Chair Kenley and certain other legislators would ask the Legislative Council to provide proper support to accomplish their legislative goals for revising the juvenile code. Mr. Bercovitz stated that he will consult with the juvenile judges about this issue.

Chair Kenley discussed a presentation made at a legislative conference by an Oregon senator concerning an Oregon restorative justice project which was established by statute (see Exhibit C). The Committee discussed the merit of Chair Kenley arranging for the Oregon senator to address the Committee at a future meeting.

Ms. Kay Crawford, Research Fellow, Hudson Institute, stated that the Crime Control Policy Center at the Hudson Institute has been operating a restorative justice program in Indianapolis for three years. The policy center at the Hudson Institute works with the Indianapolis juvenile court, prosecution, law enforcement, and educational leaders to administer the program. The program is based on a restorative justice project in Australia and New Zealand. Ms. Crawford stated that restorative justice is an umbrella term with many components including victim

offender reconciliation. Ms. Crawford stated that a restorative justice model could be used by courts. Ms. Crawford stated that the program operated by the Hudson Institute shows a 54% reduction in recidivism and also shows high victim satisfaction. It was also noted that Minnesota has widespread restorative justice practices.

Chair Kenley questioned whether we need statutory authority to allow for restorative justice programs like the one described by Ms. Crawford. The Committee discussed the issue and stated that there may be some merit to legislating restorative justice.

Chair Kenley suggested the following tentative agenda for the next meeting:

- ✓A representative from the Hudson Institute will be invited to give a presentation on the Indianapolis restorative justice program.
- ✓Senators Ford and Lanane will draft new curfew law legislation and will present the bill to the Committee.
- ✓The Legislative Services Agency will research restorative justice principles that have been enacted into other states' juvenile codes.

V. ADJOURNMENT

Chair Kenley adjourned the meeting at approximately 11:15 a.m. The Committee's next meeting is scheduled for September 19 at 10:00 a.m. in Room 431 of the State House.