

**FINAL REPORT
OF THE
INTERIM STUDY COMMITTEE ON
JUVENILE LAW AND
RESTORATIVE JUSTICE**



**Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204**

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INTERIM STUDY COMMITTEE ON JUVENILE LAW AND RESTORATIVE JUSTICE

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A copy of this report is available on the Internet. Reports, minutes, and notices are organized by committee. This report and other documents for this Committee can be accessed from the General Assembly Homepage at <http://www.state.in.us/legislative/>.

I. LEGISLATIVE COUNCIL DIRECTIVE

The Legislative Council established the Committee in 1999 to conduct a two year study to do the following:

- (1) Study issues of concern relating to the juvenile laws and make recommendations for the revision and improvement of those laws.
- (2) Study whether the implementation of restorative justice principles would be appropriate for this state.

II. INTRODUCTION AND REASONS FOR STUDY

The juvenile laws have been periodically reviewed by study committees to better deal with delinquent children and children in need of services. A thorough study of the juvenile code has not been conducted for a number of years. Many juvenile judges and other persons involved in providing services to children believe it is time to revisit the subject.

Senate Enrolled Act 203 (1999) defined "restorative justice" as "community-based criminal justice that:

- (1) requires an offender to acknowledge the offender's wrongdoing and make reparations to the victim and the community; and
- (2) maximizes the input and participation of the offender, victim, and members of the community in an effort to:
 - (A) prevent crime; and
 - (B) restore the victim and the community after a crime has occurred to a condition as close as possible to the condition of the victim and the community before the crime occurred.

Current penal law does not require that restorative justice principles be utilized or provide funding for the wide scale implementation of restorative justice activities.

III. SUMMARY OF WORK PROGRAM

The Committee met three times in 2000. In August, the Committee took testimony on the need to make changes to the state curfew law. In September, the Committee took testimony about the restorative justice pilot project conducted in the Marion County Juvenile Court. In the October meeting the Committee heard testimony about the steps Oregon has taken to integrate restorative justice principles into the criminal justice system. The testimony taken in 2000 supplements testimony taken in 1999 concerning the need for revisions to the juvenile justice system.

IV. SUMMARY OF TESTIMONY

CURFEW LAW

The Committee heard testimony from numerous witness requesting that the state curfew law be

amended to resolve any constitutional issues related to its enforcement.

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.

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. Chinn 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)

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.

Senator Ford presented the report of the subcommittee established to develop a proposal for amending the juvenile curfew law. Senator Ford distributed PD 3286 for the Committee's consideration. The Subcommittee, which also included Sen. Lanane, felt that enactment of permanent changes to the curfew law could render the appeal of the Marion County case moot. The Subcommittee suggested a temporary change which would expire in 2002. In addition the Subcommittee favored categorizing the exceptions to the curfew law as affirmative defenses. This would simplify the decisions that a law enforcement officer must make when he or she enforces the law. Difficult issues related to making findings concerning the applicability of constitutional exemptions to the curfew law would be left to the court in which the case was filed.

JUVENILE CODE

The Commission heard testimony concerning the need to reform the juvenile code. 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.

Mr. Jeff Bercovitz, Director of Juvenile and Probation Services for the Indiana Judicial Center, 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. On behalf of Judge Mary Beth Bonaventura, Mr. Bercovitz requested that the Commission recommend the establishment of a juvenile code study commission.

Rep. Foley, speaking for a subcommittee consisting of Rep. Foley, Rep. Budak, and Rep. Hasler, expressed concern that a full-fledged review of the juvenile code with a large committee might be too costly to receive legislative approval and might end up looking at too many issues to be able to effectively resolve the pressing issues affecting juvenile justice. He described the most pressing issues facing the juvenile system to be the waiver of larger numbers of juvenile children to adult court and the lack of an effective three tier correction arrangement to deal with youthful offenders. He recommended that a small committee made up primarily of legislators be established with the limited mission of revising the juvenile code to more effectively deal with waiver issues and to establish an effective three tiered youthful offender correction system. He suggested that the Indiana Judicial Center staff the committee. He recommended that the staff be specifically charged with the responsibility of consulting all persons who have an interest or involvement in the juvenile and correction system and bringing policy alternatives to the committee. He further recommended that the work of the committee be documented to provide a legislative history for the implementation of the policies adopted by the committee.

RESTORATIVE JUSTICE

The Committee heard testimony concerning the restorative justice pilot project conducted in the Marion Juvenile Court. 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 four 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.

The project involved a study of 458 first time, non-serious offenders who were charged in the Marion County Juvenile Court. The children were randomly assigned to either a conference

group or a control group. Children were not assigned to the conference group without the consent of the child's parent or guardian.

The children involved in the project were between 12 and 14 years of age. Roughly speaking, 25% of the children had been involved in an assault, 50% had been involved in shoplifting or other theft, and 25% had been involved in a variety of miscellaneous acts, including vandalism and reckless mischief.

Two hundred twenty-six children participated in the control group. The children in the control group participated in a variety of traditional diversion programs. For example, some of the children participated in teen court or anti-shoplifting programs.

Two hundred thirty-two children participated in the conference group. Children in the conference group attended a conference chaired by a facilitator. In 50% of the conferences, a police officer was the facilitator. The child and the victims of the child's offense participated in the conference. In addition, the conference included persons, such as teachers, who were there to provide support to the child in evaluating the consequences of the child's actions and the ways that the child could respond to his or her acts.

The goal of the conference was to apply restorative justice principles. These include:

- (1) offender accountability;
- (2) community reintegration; and
- (3) victim involvement.

The conference group had significantly better outcomes than the control group. The Marion County Juvenile Court is considering the expansion of the project to repeat offenders.

Judge Payne, Marion County Juvenile Court, spoke on behalf of the use of restorative justice principles. He suggested that courts engage in "self-regulation" to limit the number of cases coming before them. Diversion programs and community service assignments for offenders limit the amount of court time devoted to a case. However, these programs do not solve the issues that brought the person to the court. As a result, these efforts virtually assure that the person assigned to the programs will return to the court.

A national report on restorative justice initiatives stated the following about family group conferencing. Family group conferencing is based on the same rationales as victim-offender mediation, with two main differences. Conferencing involves a broader range of people (family, friends, coworkers, and teachers), and family members and other supporters tend to take collective responsibility for the offender and for carrying out his or her agreement. The other difference is that conferencing often relies on police, probation, or social service agencies for organization and facilitation.

Family group conferences originated in New Zealand, where they became part of the juvenile justice system in 1989. There, the new juvenile justice model, which incorporates Maori traditions of involving the family and the community in addressing wrongdoing, has four dispositional options:

- o An immediate warning by the police.

- o "Youth Aid Section" dispositions in which a special police unit may require, for example, an apology to the victim or community service.
- o Family group conferencing.
- o Traditional youth court sentencing.

About 60 percent of juvenile offenders receive a warning or go to the Youth Aid Section, 30 percent go to conferencing, and 10 percent go to youth court.

By the mid-1990s, family group conferencing had been adopted in every state and territory of Australia. In South Australia, it is used statewide as a component of the juvenile justice system and resembles the New Zealand approach. In Wagga Wagga, New South Wales, conferences (originally part of a police diversion program) were organized and facilitated by police officers who were often in uniform. Responsibility was transferred to juvenile justice agencies in 1998, and trained community members now facilitate conferences. In Canberra, the Federal Police set up a program called the Reintegrative Shaming Experiment, which involved more than 100 trained police officers.

There is evidence that conferencing can be successful. A recent evaluation of the Bethlehem, Pennsylvania, Police Family Group Conferencing program revealed that typical police officers were able to conduct conferences in conformity with restorative justice and due process principles if adequately trained and supervised, and that very high percentages of offenders, victims, and other participants were pleased with the process. Evaluation of Canberra's Reintegrative Shaming Experiment showed similar results.

Sen. Bryant, Chairman of the Oregon Senate Judiciary Committee, told the committee about the enactment of a restorative justice program in Oregon. At present only one county is enrolled: Deshute County. He stated that Oregon prefers to call it a community justice program because the term has less of a negative connotation than restorative justice. Restorative justice seems to imply to many people that a person is soft on crime. Community justice includes many of the same goals as restorative justice:

- (1) victim participation;
- (2) government surrender of a monopoly on the criminal system; and
- (3) disposition based on community and victim needs.

Using state funds, federal funds, and private donations, Deshute County developed a plan that contains a strong restorative justice component. The program also included more local jail beds, a health care center, and program components requiring able bodied offenders to work and to attend necessary job and educational training. Among its features is a merchant's court. Shoplifters are given an option to appear before a volunteer board of merchants in return for diversion from the criminal system. Early results indicate that recidivism is lower and the victims show higher levels of satisfaction with the resolution of the cases.

In return for state money, Deshute County agreed to reduce the number of beds in state facilities that it uses to house offenders. In addition, the County is required to provide the state with a number of reports to document the uses of state money and the benefits obtained from the program. Several other counties are seriously considering enrollment in the program. He indicated that the consequences of community justice are also being studied in a seven year

program conducted by the RAND Corporation.

V. COMMITTEE FINDINGS AND RECOMMENDATIONS

The Committee made the following findings:

CURFEW LAW

Findings: The Committee makes the following findings:

- (1) Indiana's juvenile curfew law has been declared unconstitutional by a federal district court.
- (2) The court enjoined state and local governments from enforcing the law.
- (3) The rationale of the decision was that the statute was overly broad and prohibited conduct protected by the federal constitution, such as conduct involving an exercise of free speech or assembly.
- (4) The district court case is under appeal.
- (5) It is not unreasonable to believe that the case could be reversed on appeal.
- (6) While the case is on appeal, the community and, in particular, children are unprotected by any law limiting the hours in which a child may be in a public place without an accompanying adult.
- (7) Some communities have adopted local curfew ordinances.
- (8) There is a need for a uniform, state-wide curfew law pending the outcome of the appeal.
- (9) Adoption of temporary changes to the curfew law to specifically exempt its application to constitutionally protected actions would address the issues on which the court opinion was based.
- (10) Adoption of permanent changes to the statute may have the unintended effect of making the appeal moot.
- (11) It is in the best interest of the State and the citizens of Indiana for the appeal to go forward.
- (12) It is also in the best interest of the State and the citizens of Indiana to limit the duty of a law enforcement officer taking a child into custody for a curfew violation to resolve difficult issues of constitutional interpretation.
- (13) It is in the best interest of the State and the citizens of Indiana to review this issue again after the appeal is decided.

The Committee makes the following recommendations:

- (1) The General Assembly should amend the juvenile curfew statute to exempt constitutionally protected behavior from its application.
- (2) The amendment should add the exemption in the form of an affirmative defense so that the child who wishes to raise the defense carries the burden of proving that a curfew violation is justified to exercise constitutional rights.
- (3) The amendment should expire after several years to give the General Assembly another opportunity to review this issue after the appeal is concluded.

JUVENILE CODE

The Committee makes the following findings:

- (1) Many persons, including prosecuting attorneys, are generally satisfied with the juvenile code.
- (2) There is a growing consensus that there should be some type of blended tier correctional system for children. The third tier would provide intermediate sanctions between the juvenile and the adult system.
- (3) There is concern that more children are being waived to adult court without any significant increase in community safety or reformation of the affected child.
- (4) The State and the citizens of Indiana would benefit from a revision of the juvenile code and the correctional code to address the issue of a third tier correctional system and issues related to waiver of juvenile offenders to adult court, including the issue of whether adult courts should have the option of transferring a child back to the juvenile court for certain minor offenses.
- (5) The Committee has insufficient time and staff to perform the research and take the public testimony needed to make these revisions.

The Committee makes the following recommendations:

- (1) The General Assembly should establish a legislative committee to draft proposed legislation to address the issues of a three tier correctional system and adult court waivers.
- (2) The General Assembly should provide sufficient funding to employ staff for the committee.
- (3) The Indiana Judicial Center or the Legislative Services Agency should be asked to staff the committee.
- (4) The committee should be charged with the duty of giving juvenile judges, probation officers, prosecuting attorneys, the Department of Correction, police departments, sheriffs, social service agencies, guardian ad litem groups, children's advocate groups, and others interested and involved in the juvenile and correctional process a full opportunity to provide testimony and make recommendations before the committee completes its work.
- (5) The committee should be charged with the duty of documenting its work in a manner that develops a legislative history that can be used to understand and better implement the recommendations it makes.
- (6) The committee should complete its work before November 1, 2001.

RESTORATIVE JUSTICE

The Committee makes the following findings:

- (1) "Restorative justice" is a community-based criminal justice system that:
 - (A) requires an offender to acknowledge the offender's wrongdoing and make reparations to the victim and the community; and
 - (B) maximizes the input and participation of the offender, victim, and members of the community in an effort to:
 - (i) prevent crime; and
 - (ii) restore the victim and the community after a crime has occurred to a

condition as close as possible to the condition of the victim and the community before the crime occurred.

- (2) Current criminal procedures incorporate various restorative justice principles, such as the victim's rights laws that give an opportunity for a victim to receive notice of and participate in criminal proceedings and the law authorizing a court to order an offender to make restitution to a victim of a crime.
- (3) Other restorative justice techniques being successfully used throughout the United States are not widely used in Indiana. In some localities the term community justice is used instead of restorative justice.
- (4) Some of the projects are very ambitious. For example, Deschutes County, Oregon, has made a comprehensive effort to implement community justice in corrections (as distinct from traditional community corrections), reinventing its Community Corrections Department as the Department of Community Justice. Committed to principles of both community and restorative justice, the department differs in this respect from most current community policing and prosecution initiatives.
- (5) Several Indiana communities, most notably the Marion County Juvenile Court and the Elkhart County court system, have, on a limited basis, successfully implemented the restorative justice technique of family group conferencing.
- (6) Family group conferencing is based on the same rationales as victim-offender mediation, with two main differences. Conferencing involves a broader range of people (family, friends, coworkers, and teachers), and family members and other supporters tend to take collective responsibility for the offender and for carrying out his or her agreement. The other difference is that conferencing often relies on police, probation, or social service agencies for organization and facilitation.
- (7) The restorative justice projects in Marion County and Elkhart County are funded primarily with federal and local funds. The Marion County project deals with first-time, non-violent juvenile offenders and the Elkhart County project deals with a broader range of nonviolent offenders.
- (8) The extent to which restorative justice principles can be implemented statewide to replace or regularly supplement traditional correctional principles is not yet fully known.
- (9) There is a need to encourage further research and experimentation with restorative justice principles.
- (10) There is a need to clearly indicate that courts, particularly juvenile courts, are authorized to use the technique of family group conferencing as part of their community based corrections programs.

The Committee makes the following recommendations:

- (1) The General Assembly should amend the juvenile law, the community corrections law, and the probation services law to clearly authorize the use of the technique of family group conferencing.
- (2) The General Assembly should consider making a state appropriation to fund further research on and implementation of programs incorporating restorative justice principles in Indiana.

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