

Members

Sen. Brent Steele, Chairperson
Sen. Timothy Lanane
Rep. Eric Turner
Rep. Linda Lawson



LEGISLATIVE COUNCIL BARNES V. STATE SUBCOMMITTEE

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Authority: Established by LCR01-2011

MEETING MINUTES¹

Meeting Date: November 10, 2011
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington
St., Senate Chambers
Meeting City: Indianapolis, Indiana
Meeting Number: 4

Members Present: Sen. Brent Steele, Chairperson; Sen. Timothy Lanane; Rep. Linda Lawson.

Members Absent: Rep. Eric Turner.

Senator Steele called the meeting to order at 1:10 p.m.

Senator Young presented a revised draft concerning unlawful police entry (LSA document number 20121039.008). See Exhibit 1. Senator Young noted that this was a slightly revised version of a draft discussed at the previous meeting. The Subcommittee voted 3-0 to recommend this draft to the General Assembly.

Senator Lanane presented a draft concerning official misconduct (PD 3424) See Exhibit 2. Senator Lanane explained that his draft would expand the crime of official misconduct to include unlawful entry by police under certain circumstances. Senator Lanane also noted that this draft would enhance the penalty if the person who is the victim of the unlawful police entry suffered serious bodily injury. The Subcommittee voted 3-0 to recommend this draft to the General Assembly.

¹ These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative>. Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

Senator Steele stated that *Barnes* raised complicated issues, but he believed that the Subcommittee had identified the best approach to dealing with the *Barnes* opinion. However, the drafts were still works in progress, and they might be improved as they moved through the legislative process. Senator Steele proposed that this statement be included in the final report, and the Subcommittee approved including the following statement in the final report 3-0:

The Subcommittee finds that *Barnes v. State* presents complex and sensitive issues. While the Subcommittee believes that the legislation it has prepared to address the issues raised by *Barnes* represents the best approach to dealing with these issues, the Subcommittee also recognizes that its drafts are a work in progress, and that the Subcommittee's work may be improved as the proposed drafts move through the legislative process.

Legislative Services Agency Attorney Andrew Hedges presented a draft final report to the Subcommittee, which the Subcommittee adopted by a vote of 3-0.

Senator Steele adjourned the meeting at 1:30 p.m.

Permits a person to resist the unlawful entry into a dwelling by a law enforcement officer under certain conditions.

1
2 SECTION 1. IC 35-41-3-2.5 IS ADDED TO THE INDIANA CODE AS A NEW
3 SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 2.5. (a) The purpose**
4 **of this section is to protect citizens from unlawful entry into their homes by law**
5 **enforcement officers or persons pretending to be law enforcement officers. Both citizens**
6 **and law enforcement officers benefit from clear guidance about the parameters of lawful**
7 **home entry, which will reduce the potential for violence and respect the privacy and**
8 **property of citizens.**

9 **(b) This section does not apply to any of the following:**

- 10 (1) **An investigation of suspected domestic or family violence (as defined in**
11 **IC 34-6-2-34.5).**
12 (2) **The entry into a dwelling by a law enforcement officer who has a**
13 **reasonable belief that a person inside the dwelling has been or is at risk of**
14 **physical harm.**
15 (3) **An entry into a residence by invitation of at least one (1) adult resident,**
16 **unless one (1) or more other adult residents object to the entry.**
17 (4) **The entry into a dwelling by a law enforcement officer in hot pursuit.**
18 (5) **A person who is committing or is escaping after the commission of a**
19 **crime.**
20 (6) **The entry into a dwelling by a law enforcement officer with a warrant.**

21 **(c) A person may use force in accordance with this section to prevent or terminate a**
22 **law enforcement officer's unlawful entry into the person's dwelling or into the dwelling of a**
23 **member of the person's immediate family under one (1) or more of the following**
24 **conditions:**

- 25 (1) **The person does not have actual knowledge that the officer is a law**
26 **enforcement officer, and the officer:**
27 (A) **has not identified himself or herself as a law enforcement**
28 **officer; or**
29 (B) **is not wearing a distinctive uniform or badge of authority.**
30 (2) **The law enforcement officer is not engaged in the execution of the law**
31 **enforcement officer's official duty.**

32 **(d) A person may use reasonable force, including physical force, against a person**
33 **described in subsection (c)(1), if the person reasonably believes that the force is necessary**
34 **to immediately prevent or terminate the unlawful entry into the dwelling.**

35 **(e) A person may not use physical force against a law enforcement officer described**
36 **in subsection (c)(2) unless the person has no adequate alternative to prevent or terminate**

1 **the unlawful entry into the dwelling.**

2 **(f) A person who is justified in using force under this section is not required to**
3 **retreat.**

4

**PRELIMINARY DRAFT
No. 3424**

**PREPARED BY
LEGISLATIVE SERVICES AGENCY
2012 GENERAL ASSEMBLY**

DIGEST

Citations Affected: IC 35-44-1-2.

Synopsis: Official misconduct. Specifies that a public servant commits official misconduct if the public servant commits an offense while misusing a power possessed by virtue of state law, or if the public servant commits an offense while appearing to be exercising authority granted by state law that the public servant does not possess. Provides that a law enforcement officer who, knowing that the entry is unlawful, enters the residence of another person without having a reasonable belief that the unlawful entry is necessary to prevent injury or death commits unlawful entry by law enforcement, a Class D felony, and increases the penalty to a Class C felony if it results in serious bodily injury to another person.

Effective: July 1, 2012.



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-44-1-2, AS AMENDED BY P.L.102-2011,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2012]: Sec. 2. (a) A public servant who knowingly or
4 intentionally:

5 (1) commits an offense in the performance of the public servant's
6 official duties, **including an offense committed while the public
7 servant:**

8 **(A) was misusing a power possessed by virtue of state law;**
9 **or**

10 **(B) appeared to be exercising authority granted by state
11 law that the public servant did not possess;**

12 (2) solicits, accepts, or agrees to accept from an appointee or
13 employee any property other than what the public servant is
14 authorized by law to accept as a condition of continued
15 employment;

16 (3) acquires or divests himself or herself of a pecuniary interest in
17 any property, transaction, or enterprise or aids another person to
18 do so based on information obtained by virtue of the public
19 servant's office that official action that has not been made public
20 is contemplated; or

21 (4) fails to deliver public records and property in the public
22 servant's custody to the public servant's successor in office when
23 that successor qualifies;

24 commits official misconduct, a Class D felony.

25 **(b) A law enforcement officer who, knowing that the entry is
26 unlawful, enters the residence of another person without having a
27 reasonable belief that the unlawful entry is necessary to prevent
28 injury or death commits unlawful entry by law enforcement, a
29 Class D felony. However, the offense is a Class C felony if it results
30 in serious bodily injury to another person.**

