

FINAL REPORT  
OF THE  
LEGISLATIVE COUNCIL BARNES V. STATE SUBCOMMITTEE



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

November, 2011

# INDIANA LEGISLATIVE COUNCIL

## 2011

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Senator Brandt Hershman Buck Creek	Representative Kathy Richardson Noblesville
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# LEGISLATIVE COUNCIL BARNES V. STATE SUBCOMMITTEE

## Membership Roster

### Representatives

Eric Turner  
Cicero

Linda Lawson  
Hammond

### Senators

Brent Steele, Chairperson  
Bedford

Timothy Lanane  
Anderson

### Staff

Andrew Hedges  
Attorney for the Subcommittee

Mark Goodpaster  
Fiscal Analyst for the Subcommittee

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.in.gov/legislative/>.

## **I. LEGISLATIVE COUNCIL DIRECTIVE**

The Legislative Council directed the Subcommittee to review the Supreme Court's opinion in *Barnes v. State* (holding that "the right to reasonably resist an unlawful police entry into a home is no longer recognized under Indiana law") and consider a possible legislative response.

## **II. *Barnes v. State***

### **A. Factual and procedural background**

On November 18, 2007, police received a 911 call concerning a domestic disturbance at the residence of Richard Barnes and his wife. When police arrived, Barnes was in the parking lot of their apartment, very agitated and yelling. When police arrived, Barnes began yelling at the officers. At this point, Barnes's wife came out of the apartment, threw a black duffel bag in Barnes's direction, and told him to "take the rest of his stuff." Barnes's wife returned to the apartment and Barnes followed her inside. When police officers attempted to follow Barnes into the apartment, Barnes told police that they could not enter and shoved an officer against the wall when the officer attempted to do so.

Barnes was arrested and charged with Battery on a Police Officer, Resisting Law Enforcement, Disorderly Conduct, and Interfering with the Reporting of a Crime. At trial, Barnes tendered a jury instruction on the right to reasonably resist an unlawful entry by police. The trial court refused Barnes's tendered instructions and the jury convicted him of Battery on a Police Officer, Resisting Law Enforcement, and Disorderly Conduct.

On appeal, the Court of Appeals found that the trial court's refusal of Barnes's tendered instruction constituted reversible error and ordered a new trial. The state filed a petition to transfer, which the Supreme Court granted, vacating the opinion of the Court of Appeals.

### **B. *Barnes I***

On May 12, 2011, the Supreme Court issued its first *Barnes* opinion. The Supreme Court, in a 3-2 opinion, overruled the opinion of the Court of Appeals and affirmed the trial court. After describing the history of the common law right to resist unlawful police entry, the court held that public policy "disfavors any such right." The court concluded its opinion by stating "In sum, we hold that [sic] Indiana the right to reasonably resist an unlawful police entry into a home is no longer recognized under Indiana law."

The State filed a Petition for Rehearing on June 10, 2011. Seventy-one legislators filed an *amicus* brief in support of the petition. In their petition, the legislators presented two arguments: (1) *Barnes* was wrongly decided as a matter of public policy; and (2) *Barnes* was inconsistent with Indiana's self-defense statute. In particular, the legislators' petition noted that it was difficult

to determine whether *Barnes* overruled only the common law right to resist unlawful police entry, or whether *Barnes* overruled both the common law right and the statutory right to resist unlawful police entry.

### ***C. Barnes II***

On September 20, 2011, the Supreme Court issued an opinion on rehearing in *Barnes* (*Barnes II*). In *Barnes II*, the court held that neither the common law nor the Castle Doctrine (codified at IC 35-41-3-2) permits citizens to resist unlawful police entry into a home. Specifically, the court stated "we hold that the Castle Doctrine is not a defense to the crime of battery or other violent acts on a police officer." The court further noted that "reasonable resistance does not include battery or other violent acts against law enforcement." Noting that its ruling was "statutory and not constitutional," the court concluded its opinion by stating: "The General Assembly can and does create statutory defenses to the offenses it criminalizes, and the crime of battery against a police officer stands on no different ground. What the statutory defenses should be, if any, is in its hands."

## **III. SUMMARY OF WORK PROGRAM**

The Subcommittee met on June 29, 2011, August 24, 2011, October 20, 2011, and November 10, 2011.

## **IV. SUMMARY OF TESTIMONY**

### **June 29, 2011.**

The Subcommittee heard the following testimony:

- (1) Legislative Services Agency Attorney Andrew Hedges gave an overview of the Supreme Court's opinion in *Barnes v. State*.
- (2) Indiana State Police Lieutenant Mark Carnell testified that he did not believe that *Barnes* changed existing law, and that no legislation was necessary.
- (3) Senator R. Michael Young described the history of the common law right to resist unlawful entry, discussed an amicus brief filed seeking rehearing in *Barnes*, and distributed proposed legislation.

### **August 24, 2011.**

The Subcommittee heard the following testimony:

(1) Mark Meadows testified that police entry into a home should only be conducted in a legal manner, and that Indiana should respect this by maintaining the legal right to keep people out of one's home.

(2) Paul Wheeler testified that it was unconstitutional to rewrite the Fourth Amendment.

(3) Leo Blackwell, on behalf of the Fraternal Order of Police, testified that the *Barnes* court correctly recognizes that legal disputes about the right to entry should be decided by the courts, not on the doorstep.

(4) Janet Brown testified that police should not violate the Constitution and should receive remedial training on citizen's rights.

(5) Lisa Deaton described the history of the Fourth Amendment and highlighted the importance of the warrant requirement.

(6) Dwight Lyle of the Constitutional Patriots testified concerning the history of the Fourth Amendment and stated that police should not be permitted to illegally break into people's houses.

(7) Paul Ogden testified that the legislature may enact additional protections beyond what the constitution affords.

(8) Andrew Kirch testified that it was a problem that police are often aggressive, heavily armed, and commonly use automatic weapons, and that the *Barnes* court was recognizing that it is not safe to resist when police have so much firepower.

(9) Molly Hainey testified that it was unconstitutional for police to break into people's houses.

(10) Jay Martin testified that the Fourth Amendment was granted by the Creator and no one else can change or amend it.

### **October 20, 2011**

Legislative Services Agency attorney Andrew Hedges gave an overview of the Supreme Court's opinion in *Barnes II*. The Subcommittee discussed two proposed drafts: (1) a draft prepared by Senator Lanane that would expand the crime of official misconduct to criminalize unlawful entry by police under certain circumstances; and (2) a draft prepared by Senator Young that would permit citizens to resist unlawful entry by law enforcement in certain circumstances.

### **November 10, 2011**

Senator Young presented his draft concerning a citizen's right to defend against unlawful police entry. Senator Young noted that this was a slightly revised version of the draft discussed at the previous meeting. Senator Lanane presented his draft concerning the expansion of the crime of

official misconduct to encompass unlawful entry by police under certain circumstances, noting that this draft included an enhancement if the person who is the victim of the unlawful police entry suffered serious bodily injury. The Subcommittee voted to recommend both of these drafts. Senator Steele stated that he believed that the Subcommittee had identified the best approach to dealing with *Barnes*, but that the drafts were still works in progress and that they may be improved as they move through the legislative process. The Subcommittee voted to include Senator Steele's statement in its recommendations and approved a Final Report.

## **V. COMMITTEE FINDINGS AND RECOMMENDATIONS**

The Subcommittee made no findings of fact.

The Subcommittee made the following recommendations:

- (1) The Subcommittee voted 3-0 to recommend Senator Young's draft on unlawful police entry (LSA document number 20121039.008). See Exhibit 1.
- (2) The Subcommittee voted 3-0 to recommend Senator Lanane's draft on official misconduct (PD 3424). See Exhibit 2.
- (3) The Subcommittee voted 3-0 to adopt the following statement proposed by Senator Steele: 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.
- (4) The Subcommittee voted 3-0 to approve the Final Report.

WITNESS LIST

Andrew Hedges  
ISP Lieutenant Mark Carnell  
Senator R. Michael Young  
Mark Meadows  
Paul Wheeler  
Leo Blackwell  
Janet Brown  
Lisa Deaton  
Dwight Lyle  
Paul Ogden  
Andrew Kirch  
Molly Hailey  
Jay Martin



**Exhibit 1**

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

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

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

**(1) An investigation of suspected domestic or family violence (as defined in IC 34-6-2-34.5).**

**(2) The entry into a dwelling by a law enforcement officer who has a reasonable belief that a person inside the dwelling has been or is at risk of physical harm.**

**(3) An entry into a residence by invitation of at least one (1) resident, unless one (1) or more other adult residents object to the entry.**

**(4) The entry into a dwelling by a law enforcement officer in hot pursuit.**

**(5) A person who is committing or is escaping after the commission of a crime.**

**(6) The entry into a dwelling by a law enforcement officer with a warrant.**

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

**(1) The person does not have actual knowledge that the officer is a law enforcement officer, and the officer:**

**(A) has not identified himself or herself as a law enforcement officer;**  
**or**

**(B) is not wearing a distinctive uniform or badge of authority.**

**(2) The law enforcement officer is not engaged in the execution of the law enforcement officer's official duty.**

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

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

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

**PRELIMINARY DRAFT  
No. 3424**

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

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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.



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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  
3 [EFFECTIVE JULY 1, 2012]: Sec. 2. **(a)** A public servant who  
4 knowingly or intentionally:  
5 (1) commits an offense in the performance of the public  
6 servant's official duties, **including an offense committed while**  
7 **the public servant:**  
8 **(A) was misusing a power possessed by virtue of state**  
9 **law; 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  
17 in any property, transaction, or enterprise or aids another  
18 person to do so based on information obtained by virtue of the  
19 public servant's office that official action that has not been  
20 made public 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  
23 when 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**  
27 **a reasonable belief that the unlawful entry is necessary to**  
28 **prevent injury or death commits unlawful entry by law**  
29 **enforcement, a Class D felony. However, the offense is a Class C**  
30 **felony if it results in serious bodily injury to another person.**

