

# **INTERIM JOINT COMMITTEE ON JUDICIARY**

## **Minutes of the 6th Meeting of the 2019 Interim**

**November 22, 2019**

### **Call to Order and Roll Call**

The 6th meeting of the Interim Joint Committee on Judiciary was held on Friday, November 22, 2019, at 10:00 AM, in Room 154 of the Capitol Annex. Senator Whitney Westerfield, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Whitney Westerfield, Co-Chair; Representative Jason Petrie, Co-Chair; Senators Danny Carroll, Gerald A. Neal, John Schickel, Wil Schroder, Stephen West, and Phillip Wheeler; Representatives John Blanton, Charles Booker, Kevin D. Bratcher, McKenzie Cantrell, Daniel Elliott, Angie Hatton, Joni L. Jenkins, Stan Lee, Savannah Maddox, Chad McCoy, Reginald Meeks, Jason Nemes, Brandon Reed, and Maria Sorolis.

Guests: Rob Hudson, Frost Brown Todd; Charlie Vance, CEO, Erigo Employer Solutions; Karen Campbell; Amanda Parker, Senior Director and CFO, AHA Foundation; Senator Morgan McGarvey; Senator Paul Hornback; Whitney Austin, Executive Director, Whitney/Strong Foundation; Kirsten Russell, Victim; Jeremy Mull, Prosecuting Attorney, Clark County Indiana; Jen Pauliukonis, State Affairs Director, Coalition to Stop Gun Violence; Connie Coartney, Moms Demand Action; and Art Thomm, National Rifle Association.

LRC Staff: Katie Comstock, Alice Lyon, Dale Hardy, Randall Roof, Raleigh Dixon, and Yvonne Beghtol.

### **Approval of the Minutes**

Senator Schickel made a motion to approve the October 4, 2019 minutes, seconded by Representative Reed, and passed by voice vote.

### **Smokers as a Protected Class**

Senator Schickel explained that his proposed legislation would remove smokers as a protected class.

Rob Hudson, an attorney with Frost Brown Todd, stated that removing smokers as a protected class would make Kentucky more competitive while helping employees. Mr. Hudson highlighted that Ohio employers have the right to choose who they want as employees, including non-smokers. This creates a competitive advantage in the Ohio labor market, whereas Kentucky employers do not have the right to choose a healthier workforce. If an employer has the ability to choose a smoke-free workforce, it can have a positive influence on the workforce by encouraging individuals to make healthier choices.

Charlie Vance, CEO of Erigo Employer Solutions, stated that an Ohio State University study found that it costs employers approximately \$6,000 more per year to employ a smoker versus a non-smoker, due to the cost of healthcare and loss of productivity. The proposed legislation would allow employers to determine if that is a burden they are willing to accept. Mr. Vance noted that the Foundation for a Healthy Kentucky ranks Kentucky 49<sup>th</sup> in adult smoking, 44<sup>th</sup> across the nation in heart disease, and worst in the nation for cancer deaths. The foundation attributes this to tobacco use. Mr. Vance stated that employers already take on a huge financial responsibility in hiring and should be allowed to choose whether or not to take on the additional financial burden of hiring a smoker. Smoking is a behavioral choice, whereas gender, race, and other classifications are not.

## **Grandparent Custody**

Karen Campbell, a grandparent, testified that her granddaughter was born with neonatal abstinence syndrome and that she and her husband assumed custody. After having custody for seven years, the Family Court judge awarded full and permanent custody to the biological parents. The Campbells are now labeled as de facto custodians, and beginning next month are allowed only set visitation. Ms. Campbell stated that there are no laws protecting grandparents who stand in and raise their grandchildren. She said that forcing a child to stay in a home they are not familiar with is traumatic and should be considered abuse. De facto custodians should be granted the same visitation schedule as the biological parents had, rather than minimal grandparent visitation. Ms. Campbell stated that the court should consider the child's adjustment and continuing proximity to his or her home, school, and community when making custody changes. She advocated for a statute that allows a court to revoke parental rights if the court finds that a child has been abused, neglected, or diagnosed with neonatal abstinence syndrome at birth. Ms. Campbell noted that they were never informed about the right to file for parental abandonment. Had they known this, she said they could have adopted her granddaughter. Ms. Campbell stated that a time limit needs to be in place in regards to when a child with a custodial family cannot be removed.

In response to Senator Wheeler, Ms. Campbell testified that the court did rule that the Campbells were de facto custodians, and yet the judge ruled in favor of the biological parents.

In response to Chairman Petrie, Ms. Campbell confirmed that more weight should be given to a grandparent or custodial figure if the child has been with them for an extended period of time.

### **Female Genital Mutilation**

Amanda Parker, Senior Director and CFO with the AHA Foundation, advised that female genital mutilation (FGM) is a form of child abuse used to control the sexuality of females and has no health benefits. Internationally, FGM is considered a human rights violation. Ms. Parker reviewed the immediate complications, long term consequences, and risks to babies of mothers who have undergone FGM. Some communities that practice FGM also consider it physically more appealing and more hygienic. This practice is perpetuated by mothers who believe this is in the best interest of their daughters, and ensures their marriageability. Ms. Parker noted that the Centers for Disease Control and Prevention estimates that half a million girls in the United States are at risk or have undergone FGM surgery. In addition, the Population Reference Bureau estimates that 1,845 women and girls are at risk or have undergone FGM in Kentucky. A federal law was passed in 1996 banning FGM, but a federal judge found the law unconstitutional and stated

FGM is for the states to regulate, not Congress. Thirty-five states currently have laws banning FGM. Ms. Parker advised that Senator Adams' bill draft would ban FGM and make it a class B felony; would ban the taking of a girl across state lines for the procedure; would provide education, outreach, and training; would revoke medical licensing if convicted of FGM; would provide civil action for survivors up to ten years past their 18<sup>th</sup> birthday; and would define FGM as child abuse.

Jenny, a victim of FGM, added that the estimated number of girls at risk in the United States did not include her or other Caucasian or Christian girls that have undergone FGM. Jenny wants a law banning FGM to serve as a deterrent rather than punishment. She stated that if Kentucky does not ban FGM, it will allow people to transport girls here for the procedure to be performed. Jenny was five years old and has memory of the procedure, which caused long-term effects such as post-traumatic stress disorder, trust issues, school issues regarding bathroom breaks, and having to have C-section childbirths. She stated that having a law would not only inform the medical and law enforcement professions of the practice of FGM, but would inform and encourage victims to reach out for help. In addition, it would give mothers who do not want their daughters to undergo FGM grounds to stand on against family members who still believe in the practice.

In response to Senator Schroder, Ms. Parker stated that specific legislation is necessary because communities that believe in the practice of FGM do not consider it assault, and the lesser forms of FGM may not fall under the definition of assault.

In response to Senator Wheeler, Ms. Parker confirmed that the half a million females estimated at risk in the United States is based on immigration rates from countries that practice FGM, but does not include those communities in the United States that also believe in the practice. So the number at risk is actually higher.

### **Extreme Risk Protection Orders**

Senator Hornback stated that his reason for supporting Extreme Risk Protection Order (ERPO) legislation is based on changes in society.

Senator McGarvey stated that 17 states have already adopted ERPO legislation. The purpose is to protect individuals from harm as well as protecting their 2<sup>nd</sup> Amendment rights, by giving them a temporary “timeout”. ERPOs have been most effective in suicide prevention. The proposed bill would limit those who could make the request, and would require a court hearing to determine if the individual should have longer-term firearm restrictions.

Kirsten Russell, a gun violence victim, testified that her brother killed their mother by shooting her multiple times and then shot and killed himself. Family members recognized that he had changed since returning from the Navy. He was not able to hold a job and constantly worried that people were following him. Attempts of family intervention and a mental inquest warrant were denied. Because he had no criminal record he was able to purchase firearms. Ms. Russell stated that an ERPO could have changed this outcome.

Jeremy Mull, Prosecuting Attorney for Clark County Indiana, testified that Indiana has had a dangerous persons firearm law (referred to as the Jake Laird Law) since 2005, which passed 48 to 1 in the Indiana Senate and 91 to 0 in the Indiana House. Some of the similarities between the Indiana law and legislation being considered in Kentucky are that a police officer has to make a probable cause determination (similar to an arrest), the prosecutor has to file an action, and a judge has to make a finding of clear and convincing evidence that the person is dangerous. Mr. Mull stated that he uses the law regularly but not frequently. While one can never know exactly what the law may prevent from happening, Mr. Mull stated he is confident that the law has saved many lives in Indiana.

Whitney Austin, Executive Director of Whitney/Strong, testified to the mass shooting at her place of employment in Cincinnati, Ohio, where she was shot 12 times by a co-worker. Ms. Austin stated that, as a gun owner, she believes it is her responsibility to

speak out in favor of reasonable solutions that seek to balance public safety with the right to bear arms. An ERPO would provide intervention that is not available today, offers bipartisan support, is effective in reducing suicides and averting mass violence, is gun owner centric, and mirrors Domestic Violence Orders and Emergency Protection Orders.

Jen Pauliukonis, State Affairs Director of the Coalition to Stop Gun Violence, stated that the rate of gun violence in Kentucky is 1.3 times higher than the national average, and gave statistics on the increased number of suicides in rural Kentucky, of which the majority were committed using firearms. She highlighted studies that recommended preventing access to firearms as a way to save lives. ERPOs offer a temporary solution to those suffering from a crisis, allowing time for family and the individual to get the help needed. Ms. Pauliukonis reported that, as has in other states, this law could potentially affect the number of mass shootings, suicides, and homicides in Kentucky.

In response to Representative Maddox, Senator Hornback wants safeguards upfront to protect the individual's rights, including who can request an ERPO and offering some type of court counsel.

In response to Senator Carroll, Senator McGarvey stated that an adverse aspect of the 72-hour hold period is that there is no mental evaluation completed afterwards to determine if the individual should or should not have a firearm. In regards to the procedure for an ERPO, an approved individual would present to the court evidence of an imminent and substantial danger, the judge would determine whether the burden of proof is met and may sign an ERPO, then the individual would be denied access to their firearms for up to 14 days, when they then come before the court to determine whether a longer-term firearm restriction is appropriate. Even if the person is found to be an immediate danger to themselves or to others, they can petition the courts to have their firearms returned after the person has stabilized. Senator Hornback added that it is not always a mental illness, but may be a temporary mental life crisis that the person is experiencing. Senator McGarvey added that mental health professionals have asked not to be on the list of those who can petition for an ERPO. Ms. Pauliukonis stated that only 4% of all interpersonal violence is actually committed by someone with a serious mental illness. A temporary life crisis issue can be related to financial, relationship, and employment, and not necessarily a mental health issue.

In response to Senator Schroder, Mr. Mull explained Indiana's ERPO process. In regards to penalties for making false accusations, Mr. Mull stated that a police officer makes the determination as to whether or not to proceed with the seizure of guns based on their evaluation of the individual. However, the false informing statute that criminalizes making false reports or information to police officers in Indiana would apply if necessary. Senator McGarvey added that Kentucky's statute that criminalizes the filing of a false report is a Class A misdemeanor.

In response to Representative Hatton, Senator McGarvey confirmed that there has been no official input from the Fraternal Order of Police at this time. In regards to the time period before returning firearms, Senator McGarvey stated that the judge would have discretion on how long, but it would be no longer than one year.

In response to Representative Booker, Senator McGarvey stated that they are considering best practices in determining who can request the order and at this point they are only including law enforcement and immediate family members. This statute would not address how many times a petition can be made because an action that is dismissed without prejudice by a court can be refiled.

In response to Representative Maddox, Senator McGarvey stated that abuse of alcohol has been removed from the legislation. The current proposal reads that a court may consider “relevant evidence”. Representative Maddox added that this legislation violates the Constitutional rights of due process and the presumption of innocence.

Connie Coartney, Kentucky State Volunteer Chapter Lead of Moms Demand Action for Gun Sense in America, gave statistics on deaths and suicides by firearms. Ms. Coartney added that ERPOs provide law enforcement and family members a tool to intervene in a crisis situation.

Art Thomm with the National Rifle Association stated that IPOs and EPOs are already in place to remove firearms from those deemed dangerous to themselves or others. Mr. Thomm added that an individual may have to spend a large sum of money and take time off work to defend themselves against charges.

## **Adjournment**

There being no further business the meeting adjourned at 12:15 PM.