

**Carolyn E. Gutowski, Esq.**  
**Attorney, Isaac Wiles Burkholder & Teetor**  
**Testimony before Ohio House of Representatives Community and Family  
Advancement Committee**  
**HB 115 – As Introduced**  
**Wednesday, March 29, 2017**

Good afternoon, Chairman Ginter and members of the Ohio House Community and Family Advancement Committee. My name is Carolyn Gutowski, and I am a lawyer at the law firm of Isaac Wiles Burkholder & Teetor. I am here today to speak in support of H.B. 115, which is a critically important piece of legislation for two reasons. First, it provides our police officers the tools they need to perform their jobs in a safe, effective, and lawful manner. Second, it will help ensure that the constitutional rights of people who cannot communicate and advocate for themselves are protected.

I am uniquely qualified to provide testimony on the impact and importance of this bill. Currently, I provide police agencies advice and counsel regarding policy development and implementation, and defend against claims of excessive force, wrongful arrest, and failure to train. Previously, I served as an Assistant Attorney General in the Civil Rights Section of the office of Ohio Attorney General Mike DeWine. In that position, I served as counsel to the Ohio Civil Rights Commission, which is the agency responsible for policy development, regulation, and enforcement of the Ohio Civil Rights Act. I am also the mother of a four year old boy with autism, which would qualify as a “communication disorder” under HB 115.

***The Problem***

In the summer of 2016, I learned that two young men named Chris Page and Richard Mazur had been arrested and charged with OVI, not because they were drunk, but because they were autistic. Because of my background, I saw the problem from all sides: the police perspective, the civil rights perspective, and the perspective of a mother who has become an expert regarding the behaviors associated with autism.

I knew that many of the classic behaviors associated with autism—lack of eye contact, gross motor impairment, difficulty following directions, unusual speech patterns, delayed response

time to questions—were the exact same behaviors our officers are trained to look for in order to determine if an individual is under the influence of drugs or alcohol. Thus, I understood why the officers made the arrest, and I knew they acted in good faith and followed their training.

But I also knew that Chris Page and Richard Mazur were perfectly safe to be behind the wheel when they were pulled over. And I understood why their mothers were beside themselves with fury over the incidents. I would feel the same way if it were my son.

How could this happen? How could it be that everyone was in the right, but the result was so wrong?

### ***The Solution***

I teamed up with the Westerville Police Department in order to find a solution to this problem. Assistant Chief Jon Scowden, who will speak to you later today, is my training partner and he too is uniquely qualified to speak to you about HB 115—Chief Scowden has been a police officer since 1992 and his 23 year-old son, Tyler, has autism and a driver's license.

After extensive study and much trial and error, Chief Scowden and I have developed a training to teach police officers how to recognize the signs of autism and how to implement specialized tactics and accommodations in order to have safe, successful, lawful interactions.

It is through the development of this training that I have learned of the public health crisis facing all of us. The CDC estimates that as of 2014, 1 in 68 children (or 1/42 boys) has autism.<sup>1</sup> Those 1 in 68 children are quickly growing up into 1 in 68 adults, and due to a lack of infrastructure to support adults with autism, much of the burden of helping overwhelmed families or unsupported adults will default to our police departments and jails. Individuals with autism age out of the government support system at 21, and Ohio, like many states, lacks the housing, counseling, transportation, and caregiving supports necessary to care for these individuals.

This booming population is prone to police interaction—individuals with autism are seven times more likely to come into contact with police officers than their neurotypical peers.<sup>2</sup> That figure is driven by a number of factors, including that their unusual behaviors are often mistaken for criminal behavior. In addition, individuals with autism often have a lethal combination of an altered sense of fear and a tendency to wander. The American Journal of Public Health recently released a study<sup>3</sup> reporting that individuals with autism have a life expectancy of only 36, and that children with autism are 40 times more likely than their neurotypical peers to die from injuries such as suffocation, asphyxiation, and drowning—in fact, they are 160 times more likely to die from drowning than their neurotypical peers. We need to do a better job of protecting this vulnerable population, and we need to give our police officers the tools to do so.

---

<sup>1</sup> Centers for Disease Control and Prevention, March 27 2014 Morbidity and Mortality Weekly Report.

<sup>2</sup> K. Curry, M. Posluszny, S. Kraska, "Training Criminal Justice personnel to Recognize Offenders with Disabilities," Office of Special Education and Rehabilitative Services News in print (Winter 1993).

<sup>3</sup> J. Guan and G. Li, "Injury Mortality in Individuals with Autism," American Journal of Public Health (2017).

In addition, individuals with autism may become overwhelmed and engage in violent or self-injurious behaviors and our officers are often called to respond to domestic violence incidents involving an adult child with autism who has assaulted a parent and may be a threat to the officer as well. Because of the communication deficits associated with autism, our officers need to know how to interact with these individuals when they arrive on these calls.

Our officers need to know that individuals with autism process speech and language differently, and it takes them much longer to process and respond to questions and commands. Accordingly, they need to allow someone with autism a much longer period of time to respond to a question or command—we teach them to wait up to 12 uninterrupted seconds for a response. Then repeat or rephrase as necessary.

Our officers need to know that because autism affects a person's sensory processing system, individuals with autism often perceive pain differently. A slight touch on the arm may be painful, and grabbing someone's arm could make them near hysterical. On the other hand, they often have a reduced sensitivity to pain, so officers also need to know that intermediate force weapons may be much more dangerous on someone with autism, because the officer may very well break something before they gain compliance.

Our officers need to know that many individuals with autism have low muscle tone and are prone to seizures, thus they need to be careful with the way they are restrained, otherwise they risk asphyxiation.

And finally and most importantly, our officers need to know about a concept called the "escalation paradox."<sup>4</sup> Because of the sensory processing challenges associated with autism, individuals with autism who become overwhelmed by sensory input—flashing lights, wailing sirens, barking police dogs, squawking radios, strangers yelling commands they can't process because they're speaking too quickly—and as a result, may experience a sensory shut down known as a meltdown. This is when the person's brain surrenders, their instincts kick in, and the only remaining options are fight or flight.

Currently, most police officers are trained to use the continuum of force—the more out of control a situation becomes, the more force they employ in order to regain control. But with autism, it's the opposite—the more force you apply, the less control you have, and you are much more likely to be involved in a violent and potentially deadly altercation. Our officers need to know that the continuum of force will cause them to lose control rather than gain it, and that they need to know how to implement effective de-escalation tactics.

That's what happened to Calvin Champion.<sup>5</sup> Calvin was a very low-functioning adult with autism. His caretaker was having trouble getting him to comply with her while on a trip to the

---

<sup>4</sup> Osborn, *What Happened to "Paul's Law"?: Insights on Advocating for Better Training & Better Outcomes in Encounters Between Law Enf't & Persons with Autism Spectrum Disorders*, 79 U. Colo. L. Rev. 333 (2008).

<sup>5</sup> *Champion v. Outlook Nashville, Inc.*, 380 F.3d 893, 896 (6th Cir.2004).

store and she called the police. The police did not know Calvin had autism, and when he failed to respond to their commands to stop, one of the officers grabbed Calvin's arm. Because of his altered sense of pain, the grab on the arm was painful to Calvin, and he reacted violently. The officers applied more force in an effort to control him, pepper spraying Calvin and restraining him on the ground on his belly, where he asphyxiated and died.

The officers didn't know that Calvin couldn't follow their commands when they were shouting at him and not giving him sufficient response time to comply. They didn't know the de-escalation techniques we train our officers. They didn't know that if they grabbed Calvin, it would cause him to have a meltdown rather than control the situation. They didn't know that if they laid him on his belly, because of his low tone he was at risk to asphyxiate. They didn't know he had a high threshold for pain, so as he kept struggling, they kept applying force—until he died. That completely innocent young man, someone's baby, died with his face ground into the pavement, choking on his own vomit, because the officers didn't know he had autism. And those officers had to live with that.

We have the power today to make sure that never happens again. So people like Chris Page and Richard Mazur are not arrested and charged with a crime simply because of their disability. We need to make sure our officers know an individual has autism so that they can implement specialized tactics and accommodations. HB 115 takes the guesswork out of that.

### ***Next Steps***

HB 115 is an important first step. But information in the database is useless to police if they don't know what to do with it because they're not trained appropriately.

We are scheduled to provide training to police departments in Westerville, Dublin, Powell, Pickerington, and for the Delaware County Sheriff's Office, and we hope to provide it to more agencies as well. But that's just a tiny fraction of the police agencies in Ohio. The next step is passing legislation requiring all police agencies to be trained on how to interact with individuals with communication disorders like autism, and giving them the resources they need in order to do so. Bills doing exactly this are moving quickly through committees in Florida and Connecticut this term. Ohio should join them.

We ask a lot of our police officers and these days they are under scrutiny and pressure like never before. The very least we can do is provide them the tools they need to do their jobs safely, effectively, and lawfully.

Thank you for your time, and I am happy to answer any questions.

---