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How Changing the Wes Kleinert Fair Interview Act and Establishing Law Enforcement Academy Training Standards Will Help the Autism Community

*Randy Lambert**

I. INTRODUCTION

Florida's Wes Kleinert Fair Interview Act was passed in July 2016 to provide assistance to individuals on the autism spectrum when being questioned by law enforcement.¹ This law is –“the first of its kind in the country”- and affords developmentally disabled persons the possibility of having a professional present during a police interview to explain and phrase questions in a manner that the person can comprehend, as well as to provide assistance in understanding the behaviors that an autistic person may exhibit.² The act also allows such disabled persons to obtain a special designation on their state-issued identification³ and requires individual law enforcement agencies to take appropriate steps to train its personnel in accordance with the new law.⁴

Wes Kleinert's mother, Ellen Kleinert, was the driving force in getting the Act passed by the legislature.⁵ Ellen pushed for this legislation after Wes, an autistic adult, was involuntarily taken to a strip club by a family friend and the State was unable to seek criminal charges against the man after Wes could not articulate the facts of the incident to law enforcement.⁶ Although Wes's situation is a clear example of an autistic victim deserving of help, other incidents have shown that autistic

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¹ FLA. STAT. § 943.0439 (2016).

² Dan Sweeney, *Strip club visit leads to expanded state protection for the autistic*, SUN SENTINEL, Apr. 4, 2016, available at <http://www.sun-sentinel.com/news/florida/fl-disabled-state-id-20160404-story.html>.

³ FLA. STAT. § 322.051(8)(c) (2016).

⁴ FLA. STAT. § 943.0439 (2016).

⁵ Sweeney, *supra* note 2.

⁶ *Id.*

criminal suspects need assistance with interacting with law enforcement.⁷ Although there are many, four of the most egregious cases are those of Joseph Weber, Michael Fitzpatrick, Ozem Goldwire, and Daniel Kamen.⁸ Each of their stories provide examples of unfortunate incidents that this Act is designed to prevent such as— incidents in which police interaction with persons on the autism spectrum reach an unnecessary result. These cases illustrate that it can be simple for police to mistake signs of autism for those of criminal and suspicious behavior.⁹

This Note will argue that the Wes Kleinert Fair Interview Act is flawed and should be amended. While the good-faith intent of the Act seeks to produce positive change for persons on the autism spectrum, it can have adverse effects if left uncorrected. The Act should be amended so that 1) persons allowed to assist in law enforcement interactions are specifically defined, 2) the “D” designation on state identification, attainable by persons on the autism spectrum, should have a discreet alternative, 3) autistic victims cannot be held financially responsible to pay for the services of a professional during law enforcement interactions, and 4) minimum training standards for law enforcement cadets in academies are mandated to ensure compliance with the Act.

II. IDENTIFIABLE SIGNS OF AUTISM AND POLICE INTERACTIONS

Identifying a person with an autism spectrum disorder can be confusing to any person unfamiliar with the condition, including law enforcement.¹⁰ Law enforcement personnel can mistake the signs of autism with behaviors typically associated with those of criminals. Thus, this can often lead to autistic persons being easily convinced to confess to crimes they did not commit. Given the narrow distinction between the two, knowing the readily identifiable signs associated with autism are of great necessity.

As a starting point, most physicians agree that autism is a neurodevelopmental condition, which impacts brain development and

⁷ <http://nationalautismassociation.org/resources/signs-of-autism/>; See also Robert Perske, *Perspectives : False Confessions From 53 Persons With Intellectual Disabilities: The List Keeps Growing*; 46 INTELL & DEVELOPMENTAL DISABILITIES. 468-479 (Dec. 2008).; See also GOLDWIRE v. THE CITY OF NEW YORK, Plaintiff’s Complaint, Case No. 08-cv-00134-RRM-CLP.; See also UNITED STATES v. KAMEN, 491 F. Supp. 2d 142, 144 (D. Mass. 2007).

⁸ *Id.*

⁹ Bernard J. Farber, *Police Interaction With Autistic Persons: The Need For Training*, AELE MONTHLY LAW JOURNAL, AELE Mo. L. J. 101, 102 (2009).

¹⁰ *Id.*

functioning.¹¹ The *Diagnostic and Statistical Manual of Mental Disorders* (“DSM IV”) defines autism as a developmental disorder.¹² Autism is merely one disorder that falls under the umbrella of autism spectrum disorders that are classified as development disabilities. With onset before three years of age, autistic persons suffer from life-long neurological conditions that interfere with communication and the ability to have normal social interactions.¹³ Autism is one of five Pervasive Developmental Disorders¹⁴ for which no blood test and specific biological marker exist to assist in diagnosing the disorder itself.¹⁵ Instead, an autism diagnosis is based upon the recognition of certain core behavioral features, such as social communication or interaction differences, fixated interests, and repetitive behaviors.¹⁶ According to the DSM-IV, there are three requirements that must be met for a diagnosis of autism.¹⁷ The first is that the individual must display at least six out of the twelve listed diagnostic criteria.¹⁸ These criteria are divided into three categories that are labeled as Category One (“qualitative impairment in social interaction”), Category Two (“qualitative impairments in communication”), and Category Three (“restricted repetitive and stereotyped patterns of behavior, interests and activities”).¹⁹ Of the criteria the individual may display, at least two of them must be from Category One, at least one must be from Category Two, and at least one must be from Category Three.²⁰ The second requirement is that the individual has “[d]elays or abnormal functioning in at least one of the following areas, with onset prior to three years of age: (1) social interaction, (2) language used in social communication, or (3) symbolic or imaginative play.”²¹ The third requirement is that “[t]he disturbance is not better accounted for by Rett’s Disorder or Childhood Disintegrative Disorder.”²²

¹¹ SIMON BARON-COHEN, *THE ESSENTIAL DIFFERENCE: THE TRUTH ABOUT THE MALE AND FEMALE BRAIN* 137 (2003).

¹² AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS: DSM IV 70-71* (rev. 4th ed. 2000).

¹³ Thomas Hafemeister, *Other Developments*, 27 *DEV. MENTAL HEALTH L.* 71(2008).

¹⁴ AM. PSYCHIATRIC ASS’N, *supra* note 12.

¹⁵ Daniela Caruso, *Autism in the U.S.: Social Movement and Legal Change*, 36 *AM. J.L. & MED.* 483, 490 (2010).

¹⁶ Am. Psychiatric Ass’n *Diagnostic and Statistical Manual of Mental Disorders, DSM-V* (2016).

¹⁷ AM. PSYCHIATRIC ASS’N, *supra* note 12.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

Most professionals agree that autism is highly variable meaning the intensity of autistic behavior can vary greatly among persons and can change throughout an individual's lifetime.²³ Thus, the autism spectrum "is broad enough to encompass both a severely mentally retarded autistic person without speech to a super-intelligent but socially awkward mathematician or physicist."²⁴ The most common visible signs of autism are avoiding eye contact; wanting to be alone; having difficulty understanding or showing understanding of other people's feelings or their own; having no speech or delayed speech; giving unrelated answers to questions; getting upset by minor changes; having obsessive interests; flapping of hands, rocking one's body, or spinning in circles; having unusual reactions (over or under-sensitivity) to the way things sound, smell, taste, look, or feel; having low to no social skills; avoiding or resisting physical contact; demonstrating little safety or danger awareness; having extreme anxiety and phobias, as well as unusual phobias; impulsivity (acting without thinking); short attention span; aggression, unusual mood or emotional reactions; and lack of fear or more fear than expected.²⁵ Because it is easy for law enforcement officials to mistake these signs of autism as criminal and/or suspicious behavior, autistic persons are susceptible to wrongful confessions, convictions, and unnecessary confrontations.

A. *The Joseph Weber incident*

Joseph Nathaniel Weber from Hays, Kansas was 36 years old and learned to embrace his autism and lead a fairly normal life, working at a local outfitter and serving as a member of the Knight of Columbus at his church.²⁶ Weber was also a participant of New Age Services, which provides activities, services, and jobs to members of the community with mental disabilities.²⁷ According to the local county attorney, in August 2016 after being stopped for an unknown traffic infraction, Weber was reluctant to respond to the officer's commands.²⁸ As backup officers arrived, Weber became startled and drove off to New Age Services, a

²³ROY RICHARD GRINKER, UNSTRANGE MINDS: REMAPPING THE WORLD OF AUTISM 10 (2007).

²⁴*Id.*

²⁵*Signs of Autism*. Nat'l Autism Ass'n. <http://nationalautismassociation.org/resources/signs-of-autism/>

²⁶Matt Agorist. *Cops Kill Speech Impaired Autistic Man Trying to Find Safety in Home for People with Disabilities*. The Free Thought Project (2016). <http://thefreethoughtproject.com/cops-kill-autistic-man/>

²⁷*Id.*

²⁸*Id.*

place that he recognized as safe.²⁹ Upon exiting the vehicle, Weber continued to disobey the officers' commands and was ultimately shot and killed.³⁰ Weber's autism had left him with very low verbal skills and it is likely that he simply had no idea what to do under those circumstances.³¹ When someone with autism is yelled at, or experiences bright lights, loud noise, and highly stressful situations, they tend to breakdown.³² Weber was most likely experiencing a breakdown when police opened fire.³³ He died at the scene. Prior to his death, Weber had never had an encounter with law enforcement.³⁴

B. The Michael Fitzpatrick Incident

Michael Fitzpatrick was questioned by police, who were mistaken in assuming that Fitzpatrick was involved with a bank robbery.³⁵ Although Fitzpatrick eventually signed a confession, no record was made of the actual interrogation.³⁶ Interestingly, Fitzpatrick had a remarkable ability to recall events that transpired and wrote a six-page summary of his interrogation that was conducted by the police chief.³⁷ In the summary, Fitzpatrick said that the chief "told me that he would talk to me like a father to a son."³⁸ So I said, 'Okay, Dad.'"³⁹ Five months later, the real bank robber confessed and mentioned that he "could not stand seeing a person with an intellectual disability go to prison for a crime he, a serial bank robber, committed."⁴⁰

C. The Ozem Goldwire Incident

On the evening of January 2, 2006, in New York, twenty-seven year old Ozem returned home where he lived with his sister, Sherika.⁴¹ Since childhood, Ozem has suffered from autism and it is readily

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Agorist, *supra* note 26.

³³ *Id.*

³⁴ *Id.*

³⁵ Robert Perske, Perspectives: False Confessions From 53 Persons With Intellectual Disabilities: The List Keeps Growing; 46 INTELL & DEVELOPMENTAL DISABILITIES 470 (Dec. 2008).

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Complaint of Plaintiff at 3, GOLDWIRE V. THE CITY OF NEW YORK (2008) (No. 08-cv-00134-RRM-CLP), 2008 WL 7295405..

observable in his demeanor.⁴² Upon entering the home, Ozem noticed that a break-in had occurred and that his sister was deceased in her bed.⁴³ He then called police, who subsequently transported him to the precinct where he was held for twenty-one hours and was repeatedly questioned.⁴⁴ His mother was denied access to him for the entire time and officers were deceptive in telling her his whereabouts, despite the fact that she was adamant that Ozem had mental limitations.⁴⁵ At one point, well into the twenty first hour that he was being held, police accused him of raping his sister, pushed him into a corner of the room, and screamed at him.⁴⁶ All three detectives told Ozem they believed that he had had sex with his sister and continued to scream at him and tell him that they knew he had done it.⁴⁷ Three hours later, detectives again insisted that he had killed her and told him that they had physical evidence to support their claims, which were both lies.⁴⁸ The detectives insisted that he write a statement indicating that a physical altercation had occurred and that he had strangled her.⁴⁹ Through all of the interrogations during his twenty-one hour isolation, Ozem did not give into the detectives' demands until they told him that if he did not write a statement indicating that he had killed his sister, he would not be permitted to leave.⁵⁰ It was only then that Ozem rendered a statement indicating that there had been a significant struggle with his sister that had ended with her death.⁵¹

Three hours later, during his videotaped conversation with an assistant district attorney, Ozem indicated that he had not harmed his sister.⁵² None of the earlier interactions between Goldwire and the named-defendants had been recorded either on videotape or audiotape.⁵³ Ozem was subsequently convicted of his sister's death and imprisoned for one year and 11 days, until "both the prosecutors and defenders saw

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 4.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Complaint of Plaintiff at 4, *GOLDWIRE V. THE CITY OF NEW YORK* (2008) (No. 08-cv-00134-RRM-CLP), 2008 WL 7295405.

⁴⁸ *Id.* at 5.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ Complaint of Plaintiff at 5, *GOLDWIRE V. THE CITY OF NEW YORK* (2008) (No. 08-cv-00134-RRM-CLP), 2008 WL 7295405.

that the confessions were so ‘preposterous’ that a state supreme court judge released [Ozem] because of his obvious innocence.⁵⁴

D. The Daniel Kamen Incident

Daniel Kamen was a man diagnosed with an autism spectrum disorder known as Asperger’s Syndrome.⁵⁵ Kamen had struggled for a very long time with sexual problems relating to erectile dysfunction due to a blocked artery in his penis and severe curvature of his penis.⁵⁶ After being treated by medical professionals for over a year, one professional recommended that he try to remedy his sexual problems with the aid of pornography.⁵⁷ After delivery of the videos via the mail system, Kamen was questioned by a US Postal Inspector for purchasing mail order child pornography.⁵⁸ Kamen waived his rights and offered to fully cooperate with investigators in the matter.⁵⁹ He then rendered a statement in which he admitted he had ordered the three video tapes through the United States mail (Kissing Cousins, Boys Will Be Boys, and Boys and Girls), and that he knew that the images depicted minors engaged in sexually explicit conduct.⁶⁰

At trial, expert testimony was offered that Kamen suffered from a major depression mood disorder, including Asperger’s.⁶¹ The expert witness went on to say that someone with Asperger’s “may be able to get an “A” in history because they can remember those facts. Yet, the expert witness questioned how those individuals interact with people and understand the social realm in which we live.⁶² She further noted that symptoms in Kamen’s past history were akin to those of Asperger’s, such as obsessive single-mindedness about certain things, lack of facial expression, not understanding social customs and being socially awkward, and his naiveté.⁶³ His naiveté was particularly important because it demonstrated that he regularly did not understand the consequences of his behavior.⁶⁴ This naiveté would also cause him to be extremely susceptible to suggestion and over eagerness to please

⁵⁴Robert Perske, Perspectives: False Confessions From 53 Persons With Intellectual Disabilities: The List Keeps Growing; 46 INTELL. & DEVELOPMENTAL DISABILITIES., 468, 471 (Dec. 2008).

⁵⁵UNITED STATES V. KAMEN, 491 F. Supp. 2d 142, 146 (D. Mass. 2007).

⁵⁶*Id.* at 145.

⁵⁷*Id.* at 143.

⁵⁸*Id.* at 144.

⁵⁹*Id.*

⁶⁰*Id.*

⁶¹*Kamen*, 491 F. Supp. 2d at 146.

⁶²*Id.*

⁶³*Id.*

⁶⁴*Id.*

others.⁶⁵ Based on the evidence presented, the court granted Kamen's motion for a new trial based on the possibility that his Asperger's could have led to an over-eagerness to please the postal inspector with an apology or embellishment of his culpability at the time of the confession, or to a lack of understanding of what he actually ordered until he viewed it.⁶⁶

E. The Wes Kleinert Incident

In January 2010, a family friend took Wes Kleinert, a 29-year old autistic man, to a strip club unwillingly.⁶⁷ The man paid for Wes to have a lap dance and when Kleinert became upset, wouldn't let him leave or call his mother.⁶⁸ His mother, Ellen Kleinert, later learned of the trip to the strip club and immediately went to the Broward Sheriff's Office to seek charges against the man.⁶⁹ Law enforcement was initially reluctant to get involved because Wes is a grown man, seemingly capable of choosing to attend such an establishment without undue influence.⁷⁰ However, Wes actually has the cognitive functioning of a 14-year-old.⁷¹ Wes was eventually taken to a room alone with a detective, but the questions he was asked confused him and Wes was not able to provide the sufficient evidence to charge the man with a crime.⁷²

III. THE WES KLEINERT FAIR INTERVIEW ACT

In hopes of preventing other incidents and providing protection to individuals with autism, Ellen pushed for the passage of the Wes Kleinert Fair Interview Act.⁷³ She said, "Our goal was to make it hopeful that this situation would not happen to people similarly situated to Wes."⁷⁴ With the support of Broward Sheriff Scott Israel, and the help of her husband, attorney L. Jerry Cohn, Ellen Kleinert came up with the idea for the interview part of the new law.⁷⁵

The interview portion of the act created Florida Statute 943.0439 that reads:

⁶⁵ *Id.*

⁶⁶ *Kamen*, 491 F. Supp. 2d at 152.

⁶⁷ *Sweeney*, *supra* note 2.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Sweeney*, *supra* note 2.

⁷⁴ *Sweeney*, *supra* note 2.

⁷⁵ *Id.*

Interviews of victims, suspects, or defendants with autism or an autism spectrum disorder; (a) A law enforcement officer, a correctional officer, or another public safety official shall, upon the request of an individual diagnosed with autism or an autism spectrum disorder or his or her parent or guardian, make a good faith effort to ensure that a psychiatrist, psychologist, mental health counselor, special education instructor, clinical social worker, or related professional is present at all interviews of the individual. The professional must have experience treating, teaching, or assisting patients or clients who have been diagnosed with autism or an autism spectrum disorder or related developmental disability, or must be certified in special education with a concentration focused on persons with autism or an autism spectrum disorder. All expenses related to the attendance of the professional at interviews shall be borne by the requesting parent, guardian, or individual. If the individual is a victim, the defendant shall reimburse the victim for all expenses related to the attendance of the professional at the interview, in addition to other restitution or penalties provided by law, upon conviction of the offense of which the individual is a victim. Failure to have a professional as defined by this subsection present at the time of the interview is not a basis for suppression of the statement or the contents of the interview or for a cause of action against the law enforcement officer or agency. This subsection applies to such an individual who is the victim, a suspect, or a defendant formally accused of a crime; (b) Each law enforcement agency must ensure that appropriate policies are developed which implement this section and that training is provided to its law enforcement and correctional officers based on those policies.⁷⁶

Additionally, the act led to the amending of Florida Statute 322.051(8) by adding section (e), which states:

Upon request by a person who has a developmental disability, or by a parent or guardian of a child or ward who has a developmental disability, the department shall issue an identification card exhibiting a capital "D" for the person, child, or ward if the person or the parent or guardian of the child or ward submits: a. Payment of an additional \$1 fee; and

⁷⁶ FLA. STAT. § 943.0439 (2016).

b. Proof acceptable to the department of a diagnosis by a licensed physician of a developmental disability as defined in s. 393.063⁷⁷; 2. The department shall deposit the additional \$1 fee into the Agency for Persons with Disabilities Operations and Maintenance Trust Fund under s. 20.1971(2)⁷⁸; 3. A replacement identification card that includes the designation may be issued without payment of the fee required under s. 322.21(1)(f)⁷⁹; 4. The department shall develop rules to facilitate the issuance, requirements, and oversight of developmental disability identification cards under this section.⁸⁰

Had this Act been in place at the time of Wes's incident, he could have been provided assistance from a professional or expert, which may have led to the prosecution of the man that forced him to go to the strip club. Had a similar law been in place in their respective jurisdictions, the stories of Joseph Weber, Michael Fitzpatrick, Ozem Goldwire, and Daniel Kamen could have been much different. Through a simple database check of his driver license via his license plate, police could

⁷⁷ FLA. STAT. § 393.063 (2016).

(12) Developmental disability means a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

⁷⁸ FLA. STAT. § 20.1971 (2016).

(2) The Operations and Maintenance Trust Fund.

(a) Funds to be credited to the trust fund shall consist of receipts from third-party payors of health care services such as Medicaid. Funds shall be used for the purpose of providing health care services to agency clients and for other such purposes as may be appropriate and shall be expended only pursuant to legislative appropriation or an approved amendment to the agency's operating budget pursuant to the provisions of chapter 216.

(b) Notwithstanding the provisions of s. 216.301 and pursuant to s. 216.351, any balance in the trust fund at the end of any fiscal year shall remain in the trust fund at the end of the year and shall be available for carrying out the purposes of the trust fund.

⁷⁹ FLA. STAT. § 322.051(e)(3) (2016).

(1)(f) An original, renewal, or replacement identification card issued pursuant to s. 322.051 is \$25, except that an applicant who presents evidence satisfactory to the department that he or she is homeless as defined in s. 414.0252(7); his or her annual income is at or below 100 percent of the federal poverty level; or he or she is a juvenile offender who is in the custody or under the supervision of the Department of Juvenile Justice, is receiving services pursuant to s. 985.461, and whose identification card is issued by the department's mobile issuing units is exempt from such fee.

⁸⁰ FLA. STAT. § 322.051(e)(4) (2016).

have ascertained that Weber had a developmental disability that attributed to his decision to disobey officer commands. And if an autism professional were permitted to be present during the police interrogations of Fitzpatrick, Goldwire, and Kamen, they could have assisted with understanding questions and the need to have legal counsel present.

IV. THE PROBLEMS WITH THE ACT AND SOLUTIONS

The Wes Kleinert Fair Interview Act is a great step forward in ensuring that the rights of autistic persons are protected. However, the Act is not without flaws. Four problems exist in the Act, that if amended or supplemented, would make the Act better.

First, the interview portion of the Act is too broad in defining the types of persons allowed to assist in interviews.⁸¹ As stated in the law, the person present during questioning can be a “psychiatrist, psychologist, mental health counselor, special education instructor, clinical social worker, or related professional.”⁸² The law states that the “professional must have experience treating, teaching, or assisting patients or clients who have been diagnosed with autism or an autism spectrum disorder or related developmental disability or must be certified in special education with a concentration focused on persons with autism or an autism spectrum disorder.”⁸³ The “related professional” wording is the ambiguous portion of the law that could confuse the law enforcement officers. Allowing any person with relatively simple experience in assisting autistic persons to serve as the “professional,” leaves the door open for opportunistic people to take advantage of the law. One could envision that persons who have minimal experience with autism will hold themselves out to law enforcement as professionals, to be called upon in a time of need during an interview. Even more is that any person in such a role is paid for their services, which increases the likelihood of ill-experienced persons attempting to assist.

Obtaining the proper people to assist autistic persons when being questioned by law enforcement is imperative to the effectiveness of acts such as the Wes Kleinert Fair Interview Act. In amending the law, Florida should require that persons be minimally certified to assist in such situations. Minimum certification requirements could be established based on a person’s qualifications, such as education and related experience. Although the Act currently provides partially for qualified professionals, there is a loophole, as previously indicated in the

⁸¹ FLA. STAT. § 943.0439 (2016).

⁸² *Id.*

⁸³ *Id.*

“related professional” wording. This portion of the Act should be removed and supplemented with a state-recognized certification process, which should account for current industry standards. Doing so will eliminate the confusion that law enforcement will face when deciding whom to call when a situation arises. Requiring professionals to maintain a certification would allow them to stay on an on-call list that can be provided electronically to all law enforcement agencies in Florida. Additionally, unless police deem that time is of the essence, the law should mandate that questioning by police should not commence until such a professional is present.

Second, the “D” designation on state identification is a good idea; however, an alternative should be available for individuals wanting to be more discreet.⁸⁴ The law currently allows for autistic persons to voluntarily have a “D” on their state-issued identification, which can signal to law enforcement that they have a developmental disability.⁸⁵ Although this appears helpful, and it very well can be, it could also have negative repercussions. Government issued identification is practically a necessity in today’s world. It is used for so many things other than driving. Having a “D” placed on the drivers’ license can subject the autistic person to unnecessary discrimination. The need for police to be able to identify an autistic person quickly is a great thing, but there are many other instances that such private information should not be shared, such as in an application for employment.

In lieu of the “D” designation on an autistic person’s state identification, persons should be allowed the option to only have such an identifier on their electronic file, usually maintained by motor vehicle licensing agencies. By doing so, police will still have access to the information, but it will not be readily available to anybody else when an autistic person uses their identification for other purposes. Understandably, having the “D” on a license adds a layer of protection that would not be present for persons who would choose to only have the identifier on their electronic record. However, keeping the “D” designation is still an excellent proposal for persons who desire to have it. My argument is that the alternative outlined above provides for persons who prefer a level of discreetness not afforded to them as the law is currently written.

Third, the law could leave the autistic person responsible for paying for the services of the professional assisting them.⁸⁶ Although reimbursement to the autistic person is required by a defendant when the

⁸⁴ FLA. STAT. § 322.051 (2016).

⁸⁵ *Id.*

⁸⁶ FLA. STAT. § 943.0439 (2016).

defendant is found guilty,⁸⁷ reimbursement is not required if the actual suspect is an autistic person. Additionally, reimbursement to an autistic victim is not required if the suspect is found not guilty.

Clemency to pay for the services of the professional by the autistic victim should not be contingent upon the guilt of the suspect. Regardless of whether they are a victim, witness, or suspect, the need of the autistic person to have a professional present during questioning is important. Florida should amend the current law to specify scenarios in which payment for interview assistance would be borne by the government. Such scenarios are when police need an autistic victim's testimony, but the suspect is later found not guilty. Making the autistic person pay for the service in such an instance would be improper. Allocation of funds to pay for these services should be appropriated at the state and/or local level. The costs should also be offset by using funds collected from the addition of the "D" designation on driver's licenses or the proposed discreet alternative I have outlined above.

Lastly, the law does little to require more training for the law enforcement community to aid them in complying with this new law.⁸⁸ It does mandate that law enforcement agencies take "proper steps" to ensure policies are developed and that training be given to existing officers.⁸⁹ However, there are no set numbers of training hours specifically set aside in academies for autism spectrum disorder.⁹⁰ Thus, there exists a problem regarding required training for cadets as compared to continuing training for existing officers.

In complying with the Act's requirement of law enforcement agencies to develop training for existing officers, the state legislature and state senate passed House Bill 39 and it was signed by the Governor on June 2, 2017.⁹¹ Effective October 1, 2017, the bill established § 943.1727, F.S. and significantly aids law enforcement in being able to identify autistic behaviors in persons with whom they interact.⁹² The law requires the Florida Department of Law Enforcement to establish a continued employment-training component relating to autism spectrum disorders.⁹³ Such training includes "recognition of the symptoms and characteristics of an individual on the autism disorder spectrum and

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Bill Analysis and Fiscal Impact Statement, Autism Awareness Training for Law Enforcement Florida Officers, SB 1352, The Professional Staff of the Committee on Criminal Justice, Fla. 2016. (pre-training meeting analysis by Erickson)

⁹¹ Fla. H. Rep. 39, 2017 (Fla. 2017).

⁹² *Id.*

⁹³ *Id.*

appropriate responses to an individual exhibiting such symptoms and characteristics.”⁹⁴ Most importantly, the law specifies that the training can be counted towards the required 40 hours of continuing employment training that all officers must complete every four years, per § 943.135, F.S.⁹⁵ Factoring the training into the 40 hour requirement incentivizes current law enforcement officers to take part.

In contrast, there are minimal requirements for FDLE to ensure that cadets in academies receive ample initial training relating to autistic persons. Criminal Justice Standards and Training Commission (CJSTC) standards on autism related training in academies is typically covered under Chapter 3 (Interactions in a Diverse Community) and Chapter 6 (Calls for Service).⁹⁶ Instructors for each of the referenced chapters are given resources such as videos and links to informational websites to aid classroom instruction as well as an instructor guide with required and suggested activities.⁹⁷ “Examples of suggested activities are reviewing websites such as floridaautismcenter.info, florida-card.org, and autismfl.com, reviewing case law, and inviting a guest speaker from the Autism Society or a member of the Exceptional Student Education Program (ESE).”⁹⁸

Although it appears that FDLE has taken steps to ensure that cadets are receiving appropriate training, there are no clearly defined training guidelines or policies. Having standardized cadet training that is comparable to the continuing training requirements of current officers is critical to ensuring that every law enforcement officer is equipped to deal with autistic persons, regardless of whether a brand-new officer or a veteran. Until specific training is established for cadets in recognizing symptoms and characteristics of an individual on the autism spectrum and appropriate responses are established, there will remain the possibility that an officer will not be prepared to handle the situation when the time arises. In order to fully implement the Wes Kleinert Fair Interview Act, such gaps in law enforcement training must be filled. The responsibility lies with the state legislature and FDLE to facilitate an appropriate resolution to the problem. The framework established for continuing education can easily be implemented into academy curriculum to negate the problem.

⁹⁴ Fla. H. Rep. 39, 2017 (Fla. 2017), lines 21-23 amend. (Feb. 2017).

⁹⁵ *Supra* note 91.

⁹⁶ *Supra* note 90.

⁹⁷ *Id.*

⁹⁸ *Id.*

V. CONCLUSION

The Wes Kleinert Fair Interview Act was a step in the right direction in providing proper assistance to persons with autism spectrum disorders when being questioned by law enforcement. Incidents throughout history have shown that such an act is necessary and is evidenced by the specific situations detailed above. Joseph Nathaniel Weber might still be alive today if similar legislation had been passed in Kansas. If a designation on his electronic driver license file could have signified to police that he did have a developmental disability, they may have better understood why he failed to abide by officer commands and not have shot him. Had Michael Fitzpatrick been afforded the presence of an autism professional during his interrogation, he may never have been convicted. The professional could have explained to him the implications of not having an attorney present, which greatly contributed to his coerced confession. Additionally, the professional could've helped Fitzpatrick understand the police questions better and explain to police, his behaviors. Like Fitzpatrick, Ozem Goldwire most likely would not have been convicted if he were also allowed to have an autism professional present during police questioning. It is without question that detectives in the Goldwire incident tortured Goldwire into confessing. Having a professional in the room would have afforded him a level of protection and likely resulted in him not confessing to a crime he did not commit. Regarding Daniel Kamen, if the law had permitted him to have a professional present during questioning, he too would probably not have confessed. The expert testimony in the Kamen case revealed that his developmental disability often led him to be overeager to please others. The wanting to please others, also known as the confession to the Postal Inspector, could have been avoided.

However, as with many laws, The Wes Kleinert Fair Interview Act has flaws that should be amended and supplemented. Not having specificity in regard to what constitutes an "other related professional" could have negative impacts upon the autistic person seeking assistance. It has the propensity for people to take ill-advantage of the law, while possibly not providing effective assistance to the autistic individual. The "D" designation on state-issued identification should have a more discreet alternative that an autistic person can elect, if they so choose. Keeping the developmental disability delineation on the electronic file only maintains the privacy of those who would otherwise not elect to have the "D" on their identification. Victims and witnesses should not be required to pay for the services of professionals as stated in the Act, as it imposes an unnecessary burden upon them. Funding, as stated above, should be provided to offset the cost and need of the professional

services. And lastly, the state legislature and FDLE must act now to ensure that law enforcement cadets in academies are receiving structured training that equips them to handle situations with autistic persons.