

Florida's Centers for Autism and Related Disabilities

Fact Sheet on "The Wes Kleinert Fair Interview Act"

In October, Florida will enact the Wes Kleinert Fair Interview Act. This act has two parts, both of which are important to understand and both of which present options that may impact individuals with Autism Spectrum Disorder (ASD). The statewide Center for Autism and Related Disabilities (CARD) wants to ensure you make an informed decision in choosing, if you plan to take advantage of these options. For ease of reading, this document uses the word "you" to mean an individual with ASD. Parents of minors and guardians reading this may substitute "your child/ward" for the word "you."

The first part of the act will create a new identifier on a Florida driver's license, permit or identification card. Participation in this option is voluntary. The text of this part of the act is as follows:

Effective October 1, 2016, persons or a parent/guardian of a child or ward who has a developmental disability will have the option of registering with the Florida Department of Highway Safety Motor Vehicles to issue a drivers license or an identification card exhibiting a special designation, exhibiting a capital "D" identifying the individual with a developmental disability. A fee of \$1.00 will be charged. Persons or parent/guardians with a child with a developmental disability will need to provide proof of documentation of a developmental disability, in the form of a diagnosis by a licensed physician as defined in s.393.063. Funds generated will be deposited into the Agency for Persons with Disabilities Operations and Maintenance Trust Fund.

Here are some things to consider:

- Your drivers license and identification card are required for a variety of purposes, including applying for a job or credit, air travel, verification of identity, cashing checks, etc.
- If you choose the special designation on your drivers license or identification card, you are choosing to disclose yourself as having a disability. A "D" will be imprinted on the license or Identification card for all to see. This may change the way in which you are viewed as a candidate for an application you are submitting, or place you in a vulnerable position, if the individual viewing your Identification is a predator or devious person.
- The special designation will not excuse you from arrest, prosecution, or other consequences associated with breaking any law, no matter what your age is at the time of an incident. It may simply alert law enforcement to your status as someone entitled to request a professional familiar with autism to be present at all times when you are questioned or interviewed in relation to a crime (see below). You will need to take additional steps to protect your rights in any situation involving law enforcement.
- On the other hand, given appropriate law enforcement training, the special designation may alert officers to your status as a person with ASD who may not respond in typical ways when confronted by law enforcement, so that appropriate steps can be taken to reduce the stress of such a situation and to get you supports as permitted by law.

The second part of the act deals with interviews of individuals with ASD by law enforcement, school police, and public safety personnel. The act reads as follows:

Law enforcement officers, correctional officer, or another public safety official will make a good faith effort, upon the request of the parent, guardian, or the individual, to ensure that specified professionals (psychiatrist, psychologist, mental health counselor, special education instructor, clinical social worker, or related professional) are present at all interviews of an

individual diagnosed with autism or autism spectrum disorder or a related developmental disability. The parent, guardian or individual bears the expense for hiring the professional. The professional must have experience in treating, teaching, or assisting patients or clients.

Law enforcement agencies are required to develop procedures, as well provide training to staff prior to the **October 1, 2016** implementation date of the act. CARD will be working with these agencies to provide training, support and to promote fair interviewing practices. Please take a few minutes to read and familiarize yourself with this new law.

Things to consider:

- The act may also apply to questioning by a School Resource Officer in many districts.
- The presence of a professional as defined in the act must be requested by the individual or by the parent or guardian. The act does not require law enforcement to remind them of this option.
- Law enforcement is **not required** to locate a professional, but must make a good faith effort. The presence or absence of a professional at the interview cannot be used as a defense against statements made by the suspect. The failure to find or have a professional present during questioning is **not** a basis for suppression of the statement or the contents of the interview (e.g., having the interview thrown out as evidence), or a cause of action against the law enforcement officer or agency.
- The presence of a professional does not replace the services of an attorney, nor does it replace your right to request an attorney be present.
- Anything said during an interview with a professional present can be used against you to show guilt of a crime.
- Individuals who are in professional roles named in the act do not routinely receive training on points of law, criminal codes or forensic interviewing. While they may have knowledge of ASD, they are not a substitute for legal representation.
- In order to protect a person with ASD in a police matter, whether as a witness or engaging in an illegal act, families should determine the best course of action and prepare their family member in the event they are ever brought in for questioning. The family may consider advising, that a lawyer should be present for a situation, such as this, so their family member has his/her rights protected. Educating your family member not to respond to questions, but rather request an attorney be present can be one option.
- The presence of an expert on ASD during questioning does not prohibit law enforcement from asking confusing questions which may be answered in a way that conveys you are guilty of a crime nor does it replace your right to a lawyer, nor does it provide any legal assistance.
- If you choose a professional during interviewing, it will be important to identify and establish a professional(s) trained and experienced in treating, teaching, assisting persons with autism and/or related disabilities that you will use, and that you have the agreement of such an individual to serve in this role if needed. CARD staff will provide training for referrals to such professionals, but will not serve in this capacity.
- It would be important that you have the names and contact information for the professionals you have identified for such needs with you at all times, in the event of the need to be interviewed by law enforcement. We would recommend carrying this with your identification.
- If you are the suspect in an interview situation, you will be responsible for any expenses associated with having this professional present. You will need to negotiate and determine in advance, if the professional will be charging a fee, and what are the parameters for billing. If you are being interviewed as a victim of a crime, the defendant will be ordered to reimburse you for all expenses related to the attendance of a professional at the interview, if they are found guilty of the crime against you.