

CENTER FOR DISABILITY LAW AND POLICY

Client Assistance Program
ADA Law Project

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Executive Director

HOUSE BILL NO. 2620 - TESTIMONY

Hello, My name is Steve Pennington. I am the Executive Director of the Center for Disability Law and Policy and a disability rights attorney.

The Center for Disability Law and Policy is a non-profit public interest law center which has advocated for individuals with disabilities since 1976. In 1991, the Center was designated by the governor to serve as the statewide advocate for individuals with disabilities seeking services from the Pennsylvania Office of Vocational Rehabilitation (OVR) and the Pennsylvania Bureau of Blindness and Visual Services (BVS). Since 1976, the Center has assisted literally thousands of individuals with disabilities in their relationships with these state agencies and has provided information and referral regarding disability issues in all 67 counties in the Commonwealth. In addition to serving as the statewide advocate,

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the Center also represents individuals in matters involving the Americans with Disabilities Act (ADA), especially in matters involving the employment protections set out in Title I. Since 1992, the Law Center has assisted many employees in mediating concerns under the ADA and has also provided legal representation at the administrative and federal court levels. The Law Center also acts in an advisory capacity to numerous state and federal agencies regarding disability issues.

I personally serve on the Pennsylvania and Philadelphia Bar Association Committees dealing with the provision of legal services to individuals with disabilities, and the Equal Justice Committee sponsored by Temple University. Over the years the Law Center has also represented numerous individuals with disabilities in criminal matters.

Of these, three stand out in my mind. The first involved a deaf woman who was at the 30th Street station in Philadelphia awaiting the arrival of a friend. Because of train delays, my client was at the station for 2 hours when she was approached by Amtrack police and asked to explain why she was there. My client tried to indicate that she was deaf but the police did not believe her. She was then taken into custody and later learned that the police suspected her of being a prostitute. She was

detained for approximately (6) hours and attempted to write notes to the Amtrack police explaining why she was at 30th Street station. Despite her efforts, the Philadelphia police were called and she was transported to the nearest police station. After only 20 minutes she was able to explain her circumstances to the Philadelphia police and was released.

In the second case, the police received a call reporting that a suspicious looking man was loitering outside a video store. When the police arrived they ascertained that the individual was deaf. No effort was made to communicate with him in a form which he could understand. The police assumed he could read lips. When he was unable to show any I.D., the police took him into custody. While they were attempting to put him into the patrol car, an altercation ensued and the officers were struck. Charges for simple and aggravated assault were ultimately filed against my client. At the police station, an officer who had a deaf relative was able to obtain his home phone number and his mother came and got him. After mediating this matter with the officers involved, my client plead guilty to disorderly conduct and received probation.

In the third case, a young man with chronic mental illness walked into a convenience store, and after engaging the clerk in conversation, asked him if he could help him find someone to kill

his mother. After my client left the store, the clerk called the police and my client was picked up and taken immediately into custody. In this case, the police recognized the young man had a severe mental illness. Due to problems communicating with him, they were unable to identify him in order to contact his family. He was kept in a holding cell for over 12 hours without his medication. After many calls, the police finally contacted Norristown State Hospital and he was involuntarily committed. Criminal charges were filed for conspiracy to commit murder. At the trial level, he plead guilty to terroristic threats. It should also be noted that throughout this case, serious concern was raised regarding his potential for harm despite the lack of any medical opinion to support this conclusion.

In each of these cases, there is a common thread which supports the passage of House Bill 2620. The incidents all occurred at the initial investigatory stage of the criminal process where the ability to accommodate is most problematic. At the investigatory stage, the interaction between the individual and the police is often times the key to resolving disputes. This takes place in very informal manner. A determination of whether criminal activity is afoot in most cases depends upon the police officer's ability to assess the suspects demeanor and obtain information. Unlike the formal stages of criminal proceedings

such as arrest, arraignment, preliminary hearing and trial, the methods of accommodating an individual that we are familiar with may not be practical. The ability to communicate with an individual is not solved simply by calling an interpreter at 3 o'clock in the morning. Even more important, communication problems are not limited to individuals who are deaf, but also affect others with disabilities such as Mental Illness, Traumatic Brain Injury, Epilepsy, and Cerebral Palsy. Faced with a situation where the police don't understand the nature of the individual's disability and are unable to communicate, the decision is almost always made to take the person into custody. This often results in the individual becoming fearful, and increases the chance that a struggle may ensue, despite the best intentions of the police. Even where the police understand the nature of the individual's disability and are able to communicate, the lack of information that police departments have regarding the resources that exist in the community to assist individuals with disabilities, often results in the person being detained for an unreasonable period of time. Concerns regarding medication and legal rights are obvious.

The problems outlined above are in and of themselves a strong rationale for the passage of House Bill 2620. I believe that this is bolstered by the testimony of other advocates and

concerned citizens. It is important, however, to understand that other compelling reasons exist which support the passage of 2620.

- First and foremost, House Bill 2620 is a pro-police piece of legislation. Unlike other disability rights legislation, which simply proscribes discriminatory conduct, 2620 provides a needed resource to municipal police departments to assist them in meeting the needs of individuals with disabilities. It does not create a burden for municipal police departments, but provides a needed resource that in my discussions with police officers is necessary.
- Second, there is a need for a state-wide approach to this issue. There are 844 municipal police departments and most don't have the staff or resources to develop and implement training to interact and communicate with individuals with disabilities.
- Third, there is clear statutory obligation on the part of municipal police departments under the ADA to ensure that all individuals in the community have meaningful access to the programs and services that they provide. This is not simply a "feel good" piece of legislation.
- Finally, House Bill 2620 is essential in assisting police departments to keep abreast of their obligations under the

ADA. Similar types of training have been taking place in the employment sector for many years. The Office of Vocational Rehabilitation, for example, has a division which advises employers on legal obligations under the ADA.

Because of the affirmative obligations placed upon municipal police departments, training is critical to ensure that the rights of individuals with disabilities are protected.

Passage of House Bill 2620 is critical to support the ability of municipal police departments to meaningfully address the needs of citizens with disabilities in Pennsylvania so as to ensure the same level of fair and reasonable treatment expected by all.

Thank you for the opportunity to testify concerning this important piece of legislation.

Stephen S. Pennington