



# Ohio Attorney General's Law Enforcement Bulletin



**February 2014**

## **CIT Helps Those in Crisis, Enhances Community Safety**

Bob has schizophrenia. Though he had just been released from a mental health hospital, he skipped his follow-up appointment and instead went to a grocery store, where he was shaking and harassing customers. His unruly behavior would typically have gotten him arrested. But, the officers who responded to the call took a different approach. They talked to Bob. They found out he hadn't been taking his medications, and they got him to agree to meet with his case manager. The officers took Bob back to the hospital and then to his home for his medications. At Bob's home, the situation escalated when he refused to take his medication and went for a knife.

This situation could have taken a tragic and fatal turn at that moment. But instead, the officers talked to Bob and convinced him to put down the knife. They didn't need to draw their weapons or threaten him. They just talked. Bob was transported safely back to the hospital, where he was admitted, and he again began to stabilize his illness.

Dr. S.R. Thorward of the Ohio Attorney General's Task Force on Criminal Justice and Mental Illness shared this true story at a recent task force meeting. What could have been a fatal outcome was avoided because of the specialized Crisis Intervention Team (CIT) training the officers had completed just six days earlier. The officers were able to identify Bob's symptoms, offer help, and talk him into seeking treatment. Even at the end, when Bob refused to cooperate, the officers safely transported him back to the hospital. Instead of putting a mentally unstable man in jail, the officers got Bob the treatment he needed.

CIT is supported by the National Alliance on Mental Illness (NAMI) and made available in Ohio through NAMI Ohio. To help more officers receive the training, the Attorney General Office's has provided NAMI Ohio with \$116,000 for CIT training expenses. NAMI Ohio reports that more than 6,700 Ohio law enforcement officers — about 29 percent of all full-time officers — have received the training since it was first offered in the state in 2000.

Peace officers often are the first responders to a mental health crisis. Patrol officers estimate that 5 to 10 percent of the calls they respond to involve a person or persons with mental illness, according to Dr. Mark Munetz, a mental health professional involved in developing Ohio's CIT program. These individuals can sometimes be uncooperative or dangerous, especially if their illness is not taken into account. They're often in and out of jail and draining important resources — and perhaps your patience. So why would you want to invest more of your time in learning how to handle situations involving people with mental illness?

The answer is simple: CIT is the best investment law enforcement and a community can make in responding to individuals with mental health issues. The fact is, CIT saves lives, including law enforcement officers' lives.

“CIT is critical safety training,” Ohio Attorney General Mike DeWine said. “It protects officers, it protects the public, and it increases the safety of our communities.”

CIT also allows those with mental illness to get help sooner, rather than later, before a situation becomes a crisis. Finally, it saves law enforcement time and money because it reduces the number of re-arrests and officer dispatches to mental health situations. If you arrest a mentally ill person over and over, you’re just repeating the scenario and hoping for a different outcome. But if you can help them get treatment, you might be able to solve the problem for good.

Think of CIT as an officer safety tool. That’s how Sgt. Michael Yohe of the Akron Police Department sees it. As an officer on the night shift, Yohe frequently responded to calls involving mental health issues. After taking CIT training, he assumed the role of coordinator of the department’s CIT program. Thirteen years later, Yohe still coordinates CIT efforts and now teaches and speaks about CIT.

“It allows officers the experience and insight to predict; the verbal abilities to de-escalate, distract, or delay; and finally, the availability of tools that give them the upper hand to control the conflict before coming to violence or ending in tragedy,” Yohe said.

These safety tools are taught in a 40-hour CIT training course in which officers learn about mental illness and how to recognize the symptoms and signs. This can help officers better predict behavior and the reactions of individuals with mental illness, giving them an upper hand in responding to and diverting a crisis. When an officer recognizes that mental illness is clouding a person’s judgment, he or she can see the individual as a “sick person” and better understand that person’s behaviors and reactions.

CIT also covers psychiatric medications, the local mental health system, and methods of treatment. It includes role-playing scenarios to learn de-escalation skills and covers weapons and defensive tactics useful for de-escalating a dangerous situation.

CIT is not a “quick fix” to meet a community’s mental health needs. But with dedication and commitment from law enforcement, it has the potential to make a profound impact on the lives of those living with mental illness, helping to facilitate recovery rather than incarceration.

To learn more about training in your area, contact NAMI Ohio or your local NAMI affiliate. You can also search the University of Memphis CIT Center’s national directory, at the link below, to find the CIT program nearest you.

### **Complementary OPOTA Courses**

The Attorney General’s Ohio Peace Officer Training Academy (OPOTA) offers several courses that incorporate CIT concepts, including Interacting with and De-escalating the Special Needs Population, a free, six-hour regional course; Law Enforcement Communication and Physical Control of Special Populations, a free, two-day regional course; and De-escalating Mental Health Crises, a one-hour course available online at eOPOTA.

In addition, the Ohio Peace Officer Training Commission recently updated 16 hours of crisis intervention training in the peace officer basic training and corrections basic training curricula. While the topic was already covered in both programs, it was updated in 2013 to better reflect CIT concepts and techniques.

## For Grant Information

For more information on CIT grants, contact the Ohio Attorney General's Office (Michelle Gillcrist at [Michelle.Gillcrist@OhioAttorneyGeneral.gov](mailto:Michelle.Gillcrist@OhioAttorneyGeneral.gov) or D. Michael Sheline at [Donald.Sheline@OhioAttorneyGeneral.gov](mailto:Donald.Sheline@OhioAttorneyGeneral.gov)).

## Related Links

[Ohio Police Officer Training Academy Course Catalog](#)  
[National Alliance on Mental Illness \(NAMI\) – National CIT Information](#)  
[National Alliance on Mental Illness \(NAMI\) – Ohio CIT Information](#)  
[Ohio Criminal Justice Coordinating Center of Excellence](#)  
[The Attorney General Task Force on Criminal Justice and Mental Illness](#)  
[University of Memphis CIT Center's National Directory](#)

**Christie Limbert**  
**Assistant Attorney General**

## Investigations and Interrogations (*Reliance on Informants*): *In re B.A.R.*

**Question:** Is an anonymous informant's tip enough to create the reasonable suspicion necessary to stop a suspect, even without corroborating evidence?

**Quick Answer:** Usually, no. But when the officer has significant reason to believe the informant is genuinely concerned and credible, a court might treat the informant like an identified citizen and ignore the lack of corroboration.

[\*In re B.A.R.\*](#), Tenth Appellate District, Franklin County, Dec. 24, 2013

**Facts:** Columbus Police Officer Bill Graham was working special duty at the library when he was approached by a library patron. The patron told Graham that a group of "guys" had a firearm, were in the library "for less than two seconds," and had "just left" the library. Officer Graham knew the patron had been in the library for a while, and the patron appeared to be a genuinely concerned citizen. Shortly after getting the tip, Officer Graham noticed three juveniles walking up the path to the library and matching the description provided by the patron. As soon as they saw Officer Graham, the juveniles turned around and moved quickly across the street. Officer Graham called for assistance, and Officer Amanda Kasza responded to the scene, where she detained the juveniles and searched them for weapons. Kasza discovered a firearm and a loaded magazine on B.A.R. At trial, B.A.R. argued that the library patron was an anonymous tipster, so officers needed corroborating evidence to create the reasonable suspicion necessary to conduct an investigative stop. The court disagreed.

**Importance:** A police officer may conduct an investigative stop of an individual when the officer has "reasonable suspicion" based on specific, articulable facts that a crime has occurred or is imminent. When the officer's information is based on a tip from an informant, a court will look to whether the tip itself is reliable. Generally, tips from anonymous informants are less reliable and require independent corroboration. Tips from identified citizens, on the other hand, are considered highly dependable and usually do not require independent corroboration. In this case, the court treated the anonymous patron as an identified citizen for three reasons: 1) The patron approached the officer in person,

which not only gave the officer the chance to observe the patron's credibility, but also put the patron at risk of being held accountable for false information. 2) The officer knew that the patron had been in the library for a while, which made him more likely to be a genuinely concerned citizen. 3) The patron was close in time and space to the reported criminal activity, making the tip even more trustworthy.

**Keep in Mind:** Even when an anonymous informant gives you a tip in person, you should always try to corroborate the statement. Even though the *B.A.R.* court felt that Officer Graham's observations were enough to verify the patron's credibility, you should never rely on a court to give you the same break.

### ***More on Interrogations and Investigations:***

**Wanna see this video?** A victim reports that after responding to an ad for a date, he met a woman in an alley and was then assaulted by a man, who took his wallet and phone. While building your case, you show the victim video surveillance that shows the woman and man using the victim's credit card to make purchases at three nearby stores shortly after the mugging. Unfortunately, the victim is unable to identify the man from the surveillance tapes, although he does recognize the woman who responded to his ad. Three days later, you show the victim a photo array that includes the man. The victim still cannot identify the man as the individual who assaulted him, but indicates that the man looks more familiar than the others. Did you compromise the photo identification by showing the victim the surveillance video? The court in *Richardson* said no, but only because the victim could not positively identify the man from the video and three days had passed between viewing the video and the photo array. Remember, it is the best practice to **not** show victims potentially influential evidence prior to a photo array. If the victim had been more certain that the man in the surveillance video was the man who robbed him, the outcome would probably be different. [\*State of Ohio v. Richardson\*](#), Fifth Appellate District, Stark County, Dec. 23, 2013

**Invocation or Mere Limitation?** You bring a suspect in for questioning. After *Mirandizing* him, you ask about a prior investigation by his parole officer. The suspect says, "If that's what this is about, I've, I've gotta shut down, because I can't, I can't answer questions with that without an attorney." You explain that the interview is not about any past investigations, but rather about recent allegations of inappropriate behavior between him and a minor. The suspect says that because he was on parole and a sex offender, he couldn't "answer those questions without an attorney present." After a few more questions, the suspect says, "Ok, let's just shut it down. ... I need an attorney." You end the interview and leave the room. A little while later, the suspect asks to speak with you again. You *Mirandize* him, and he waives his rights a second time. The suspect then admits to sexual activity with a minor. Is the confession good despite the suspect's statements? The court in *O'Leary* thought so, characterizing the first group of statements as limits on the questioning, rather than a definite invocation of O'Leary's right to counsel. As such, the officer was not required to end the interview. It wasn't until O'Leary finally said, "Ok, let's just shut it down. ... I need an attorney" that his request became clear and he sufficiently invoked his *Miranda* right to an attorney. However, because O'Leary later voluntarily reinitiated contact with the officer and waived his rights a second time, the interrogation could start again, and the confession was admissible. [\*State of Ohio v. O'Leary\*](#), Twelfth Appellate District, Butler County, Dec. 23, 2013

## **Search and Seizure of People (Second Pat-Down): *State of Ohio v. Dunlap***

**Question:** Can you pat down a suspect a second time based on his behavior following the first pat-down?

**Quick Answer:** A suspect may be patted down a second time if he continues to act suspiciously, even after a previous pat-down was performed and nothing was found.

**State of Ohio v. Dunlap**, Seventh Appellate District, Columbiana County, Dec. 17, 2013

**Facts:** St. Clair Police Officer Jayson Jackson stopped a vehicle because it had a broken windshield. Hashim Dunlap was in the backseat. Jackson noticed that Dunlap was acting strangely, fidgeting with the seat and handling some object. When Dunlap continued to fidget, Jackson asked him to step out of the car. The pat-down and inspection of the back seat where Dunlap was sitting turned up nothing. While he was issuing a citation to the driver, Jackson noticed that Dunlap was again fidgeting around in the backseat of the car. Dunlap's behavior concerned Jackson, so he ordered Dunlap back out of the car. Jackson asked Dunlap if he could pat him down a second time. Dunlap consented. This time, Jackson located two pockets that he had missed on the first search and felt a lump under Dunlap's jacket. Dunlap stated he did not know what the item was. Jackson admitted that he did not think the item was a weapon, but he removed it anyway and found it was a digital scale about the size and shape of a cell phone. There was white, powdery residue on the scale that was later identified as cocaine. Jackson seized the scale. Dunlap argued that Jackson had no reason to search him a second time because he had no reasonable belief that he was armed and that Jackson had no right to remove objects from his person that Jackson did not believe were weapons. The court held that the second pat-down was justified, but suppressed the powdery scale.

**Importance:** A *Terry* pat-down is limited in scope to assuring officer safety and cannot be used to search for contraband. But here, Dunlap's actions following the first pat-down were sufficient to create a suspicion that perhaps he had armed himself after the first pat-down and so supported a second pat-down.

**Remember:** Since a *Terry* stop is limited to protecting officer safety, an officer can only seize and investigate items that a reasonable officer would believe could be a weapon. In this case, the court refused to admit the scale found inside Dunlap's jacket because Jackson could tell during the pat-down that the lump was not a weapon.

### ***More on Search and Seizure***

**Who's your friend?** You and your partner respond to a radio call about shots being fired. At the scene, witnesses tell you that a black male wearing a gray jacket or hoodie, a black hat, and blue jeans tucked a gun into his waistband and ran. You quickly find a man who matched the description walking with a boy. You call both the man and boy to your vehicle and ask them to show their hands. They hesitate before complying. Concerned for your personal safety, you pat down both the man and boy. The pat-downs revealed that the boy was carrying a .22-caliber rifle. Does it matter that you only searched the boy because he was walking alongside the suspect? No, according to the court in *D.S.* Under the "automatic companion" rule, you can pat down any companion of an arrestee to get assurance that the companion is unarmed. Although in this case the boy's companion had not yet been arrested, his stop-and-frisk was still justified because the officers had reasonable suspicion that the man he was walking with was armed and dangerous. **In re D.S.**, Eighth Appellate District, Cuyahoga County, Dec. 26, 2013

**It's safe to assume she's armed.** You and your partner are watching a restaurant where you made a felony drug bust earlier in the morning when a car drives up. A female climbs out of the back seat,

speaks to the front-seat passenger, and enters the restaurant. Meanwhile, the driver pulls out a baggie, spoon, and needle, and starts cooking heroin in the front seat of the car. You arrest the men in the car and enter the restaurant to arrest the woman. As you lead her outside, she tries several times to reach into her pocket. Concerned she is armed, you pat her down and feel something in the pocket she was attempting to open. When you ask the woman what it is, she tells you it's heroin. Was the pat-down reasonable? The court in *Grefer* said yes because the officers had made a bust at the same location, saw the driver using drugs in the car, know that drug users are often armed, and witness the woman repeatedly reach for her pocket. These facts together created a reasonable suspicion that the woman was armed and a pat-down was necessary to ensure officer safety. Be careful though; although the search was justified, the seizure of the heroin was only permissible because the woman identified it and consented to its removal. [\*State of Ohio v. Grefer\*](#), Second Appellate District, Montgomery County, Jan. 10, 2014

**Bad neighborhood, suspicious behavior.** You are on patrol in a bad neighborhood and see a man dressed in all black riding a bike. You watch him stop and hand off the bike to another person. Based on your experience, you believe he is dealing drugs, but given the bad neighborhood and drug activity, you are concerned for your safety, so you call for backup. As you wait for backup, you stop the suspicious man and ask him to sit on a step until backup arrives. While waiting, you notice the man is acting nervous, has “shifty eyes,” and seems to be sitting in a way as to conceal something. You pat down the man and find a gun in his right back pocket. Did you have a reasonable suspicion to perform the pat-down? The court in *Ruff* answered yes. The officer knew she was in a bad neighborhood, and she suspected a drug offense. The suspect acted nervous while waiting and appeared to be concealing something, further supporting the officer's suspicions of criminal activity. The totality of these safety concerns justified the officer's decision to pat him down once backup arrived. Remember that the factor of being in a bad neighborhood is not a legitimate reason for a pat-down. As in this case, there must be multiple factors to give you reasonable suspicion. [\*State of Ohio v. Ruff\*](#), First Appellate District, Hamilton County, Dec. 24, 2013

## **Search and Seizure of Property and Vehicles (Probable Cause to Stop): *State of Ohio v. Jarosz***

**Question:** Is an officer's “pacing” of a vehicle sufficient to create reasonable suspicion to stop the vehicle for speeding?

**Quick Answer:** Yes, but only if the officer can show that he maintained a constant distance between vehicles for a sufficient amount of time.

[\*State of Ohio v. Jarosz\*](#), Eleventh Appellate District, Portage County, Dec. 31, 2013

**Facts:** Based on a “visual estimation,” an Ohio State Highway Patrol trooper assessed that the car driving in front of him was exceeding the 45-mph speed limit. He paced the car travelling at 52 mph, but since the car's speed fluctuated, he never got a steady pace. The trooper continued the pursuit. After crossing into a 40-mph zone, the trooper began to pace the vehicle a second time and activated his radar. The trooper made sure to keep the same distance between his cruiser and the car for 12 seconds and determined the car's speed to be 48 mph. The trooper testified that he was positive he had a good speed pace on the car and logged a speed of 48 mph in a 40-mph zone. The trooper stopped the car for speeding, and the driver was later arrested on an OVI charge. The driver argued that the evidence from the stop should be suppressed on the grounds that because the trooper



did not maintain an equal distance from the vehicle while pacing him, he did not have probable cause to stop him for speeding.

**Importance:** “Pacing” a vehicle to measure its speed can provide probable cause, but only when the facts and circumstances indicate that the pacing was done in a manner that indicates accuracy. In this case, the court determined the trooper did not use the proper technique to pace. The dashboard video did not show that the trooper maintained an equal distance from the vehicle while pacing him, and therefore speed could not be accurately established. As such, the trooper lacked probable cause to stop the vehicle, and the subsequent evidence of intoxication was suppressed.

**Keep in Mind:** Improperly using pacing techniques can lead to evidence being suppressed and criminals being freed. If your agency is interested in using the pacing method (or any other method of testing for traffic violations), make sure officers have proper training and protocols to follow. In addition, this case highlights the importance of reviewing video evidence that might contradict your testimony before taking the stand.

### ***More on Search and Seizure of Property and Vehicles:***

**Sounds like probable cause to me.** A car drives past with a louder-than-normal exhaust system that you believe is illegal. You stop the car and ask the driver to step out. When he does, you smell burnt marijuana on him. Based on the smell, you conduct a probable cause search of the driver and find a “wooden dugout” used to smoke marijuana in his shirt pocket. You charge the driver with two traffic violations: OVI and Defective Exhaust System. Were the stop and subsequent search permissible? Yes, according to the court in *Rau*. Even though the exhaust system was not objectively loud, the officer’s observance of the louder-than-normal exhaust system provided reasonable suspicion of criminal activity as outlined in [Ohio Revised Code 4513.22](#). Once the stop was made, the smell justified the search. [State of Ohio v. Rau](#), Third Appellate District, Paulding County, Dec. 23, 2013

**In case of emergency...** You execute an arrest warrant on a barely dressed suspect after she opens the back door of her home. Hoping to get her some clothes, you knock on the inside door to the main part of the house, where the suspect says her 4-year-old daughter is sleeping. Another resident opens the door, and the smell of meth is obvious to your experienced nose. Knowing the risk of explosion, you immediately begin looking for the 4-year-old. You quickly determine that the smell is coming from a bedroom and find the child asleep in the next room. When you open the door to the bedroom with the suspected meth, you see a pair of freshly “burped” one-pot meth labs. Does the meth get suppressed? The court in *Campbell* said no, because the risk of injury characteristic of meth labs creates an “exigent circumstance.” An exigent circumstance exists when an officer knows that someone is in an emergency situation with a high risk of danger. In those circumstances, you can search without a warrant, but only until the emergency goes away. [State of Ohio v. Campbell](#), Eleventh Appellate District, Ashtabula County, Dec. 31, 2013