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# UCSD UNDERGRADUATE LAW REVIEW

RACHEL MCCHESENEY

## The Wrongful Arrest Theory: Justice For Individuals With Diabetes In Criminal Law Procedure

**ABSTRACT.** This paper discusses the vulnerability of diabetic individuals when they are subjected to arrest procedures in criminal law. It analyzes the wrongful arrest theory as a device for individuals with disabilities to bring claims against law enforcement when their rights under Title II of the Americans with Disabilities Act (ADA) are violated. Individuals with diabetes constitute more than 10% of the United States population, meaning that many individuals are at risk for police misconduct because of their disability. The symptoms that come about with having diabetes, such as fruity-smelling breath and loss of coordination, can be mistaken for illegal activity leading to a wrongful arrest. No case involving ADA Title II violation claims against law enforcement relying on the wrongful arrest theory has been brought by an individual with diabetes. This paper explores the possibility of its potential success. To accomplish this, this paper first defines disability under the law, including diabetes. It then conducts a thorough analysis of the wrongful arrest theory in various case studies consisting of non-diabetic and diabetic plaintiffs. In a final case study, I apply the wrongful arrest theory to a case hypothetically to illustrate the plaintiff's potential success if he claims a wrongful arrest. Lastly, I explore some of the theory's limitations and propose a potential solution. I hope that my findings will emphasize the lack of discourse surrounding individuals with diabetes in disability law and encourage further research and education on the wrongful arrest theory as a successful claim against Title II violations committed by law enforcement.

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## INTRODUCTION

The Centers for Disease Control and Prevention estimates that about 1 in 4 adults in the United States live with some form of disability, and that number is likely to go up when taking the youth population into account.<sup>1</sup> The population of the United States of America is recorded to be approximately 336 million people<sup>2</sup> and of this population, 38.4 million Americans have been diagnosed and live with diabetes; each of these people face the possibility of injury due to police misconduct.<sup>3</sup> Even though these groups— individuals with disabilities and individuals with diabetes— make up almost 11.5% of the United States population, the discourse surrounding arrest procedures regarding these groups has been limited at best. Many individuals with diabetes have brought cases against police officers for misconduct during arrests, but successful cases that survived summary judgment are few and far between.

There is a variety of strategies commonly used by individuals with disabilities when they bring claims against law enforcement. In practice, these strategies are a gamble for individuals with diabetes because factors such as the burden of proof and qualified immunity work against the plaintiff. While relevant factors in many cases, the burden of proof and qualified immunity present themselves as a disproportionately arduous obstacle for individuals with diabetes. The case of *Fitch v. Kentucky State Police* is a prime example of this, wherein plaintiff Dan E. Fitch filed a failure to provide reasonable accommodation action against the Kentucky State Police— specifically William A. Moore— and the Kentucky Transportation Cabinet for negligent and reckless actions.<sup>4</sup> Fitch, a commercial truck driver and diabetic, was arrested at a weigh station in Kentucky for suspicion of driving under the influence. The defendants (police officers) arrested Fitch on the grounds that “he smelled of alcohol” and without any other prominent reasons.<sup>5</sup> The smell that the officers identified turned out to be the smell of ketones, a hormone produced by the body of those with diabetes that can produce a fruity-smelling odor, much like that of alcohol. However, the defendants were deliberately obtuse to this fact as Fitch continuously notified the officers of this. Later, Fitch’s blood test came back negative and he was allowed to post bond.

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<sup>1</sup> Centers for Disease Control and Prevention, Disability Impacts All of Us Infographic (15 May 2023), <https://www.cdc.gov/ncbddd/disabilityandhealth/infographic-disability-impacts-all.html>.

<sup>2</sup> U.S. Census Bureau, U.S. and World Population Clock (last visited on DATE), .

<sup>3</sup> Centers for Disease Control and Prevention, National Diabetes Statistics Report (29 Nov. 2023), .

<sup>4</sup> *Fitch v. Kentucky State Police*, Civ. Action No. 3:10-49-DCR, 2010 WL 4670440, at \*7 (E.D. Ky. Nov. 10, 2010).

<sup>5</sup> *Id.* at \*3.

However, he continued to suffer consequences as a result of this arrest; he lost his job and struggled to attain new employment as “various databases used by the commercial trucking industry identify him as having been arrested for operating a motor vehicle while intoxicated.”<sup>6</sup> Fitch sustained multiple hardships due to this wrongful arrest but did not allege claims under the wrongful arrest theory. He instead brought claims regarding failure to provide reasonable cause, a violation of the Fourth and Sixth Amendments, the Fourteenth Amendment’s due process clause, and a failure to provide reasonable accommodation.

Many other cases such as this one, will be assessed in the contents of this review. The following analysis of the wrongful arrest theory will convey its usefulness to individuals with disabilities, specifically those with diabetes, by becoming an alternative strategy to attain justice for misconduct in arrest procedures under ADA protection. Individuals with diabetes normally encounter audiences that are unfamiliar with their medical issues, and sometimes that includes law enforcement. As a result, people with diabetes would benefit from being equipped with the knowledge of disability law and wrongful arrest theory. This paper will provide insight into the prospective success of cases concerning individuals with diabetes by applying the wrongful arrest theory, an area where no cases or law reviews exist at this point.

## I. DEFINING DISABILITY

### *A. Introduction*

Fundamentally, when discussing arrest procedures regarding individuals with disabilities, it is useful to define what constitutes a disability. Per the federal civil rights law of 42 U.S.C.A. § 12102 (the ADA statute), federal law defines disability when it concerns an individual as (1) “a physical or mental impairment that substantially limits one or more major life activities of such individual,” (2) “a record of such an impairment,” or (3) “being regarded as having such an impairment.”<sup>7</sup> The wording of this law can be ambiguously interpreted, so a three-part test has been adopted by courts to determine whether an individual has a disability. This test consists of: (1) questioning if the person’s condition constitutes a physical or mental impairment, (2)

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<sup>6</sup> Fitch v. Kentucky State Police, Civ. Action No. 3:10-49-DCR, 2010 WL 4670440, at \*7 (E.D. Ky. Nov. 10, 2010).

<sup>7</sup> 42 U.S.C.A. § 12102.

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if the impairment disrupts one or more “major life activities,” and (3) if the impairment limits the major life activities that were identified substantially.<sup>8</sup>

To fulfill the first element, a stricter definition of physical or mental impairment is essential. To start, the U.S. Equal Employment Opportunity Commission (EEOC) Federal regulation 29 C.F.R. § 1630.2(h)(1) defines a physical impairment as “any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory..., cardiovascular, reproductive digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine...”<sup>9</sup> Physical impairment also has limitations depending on the normalcy of the alleged disability and timeline of such disability. To illustrate, conditions considered “normal... such as pregnancy, are not [labeled] an impairment” however, resulting impairment from said pregnancy can fall under the definition.<sup>10</sup> 29 C.F.R. § 1630.2(h)(1) continues to define mental impairment as “intellectual disability..., organic brain syndrome, emotional or mental illness, and specific learning disabilities.”<sup>11</sup> Both of these definitions are protected under the Americans with Disabilities Act (ADA), however, they are contingent on whether or not court analysis recognizes disability.

The second element concerns how the “major life activities” a person experiences in their day-to-day life are impacted by their disability. In general, major life activities are defined as including, but not limited to, “caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working” as well as the “operation of a major bodily function, including functions of the immune system..., [and] endocrine functions.”<sup>12</sup> This aspect of “major life activities” reinforces the first element noted in the three-part test. Nevertheless, the limitations due to timelines and normalcy still apply within this second element.

The third and final element of the analysis examines what is considered “substantial.” Intending to decrease debate over wording ambiguity, 29 C.F.R. § 1630.2 specifies that this element is to be considered broadly “in favor of expansive coverage” and “is not meant to be a demanding standard.”<sup>13</sup> The regulation goes on to

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<sup>8</sup> Ruth Colker, Colker’s Federal Disability Law in a Nutshell 17 (6th ed.2019).

<sup>9</sup> EEOC Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, 29 C.F.R. § 1630.2 (2011).

<sup>10</sup> Colker, *supra* note 8, at 18.

<sup>11</sup> 29 C.F.R. § 1630.2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

discuss many ways in which “major life activities” can be substantially impacted, continuously relaying that the definition of substantial can be up to court interpretation, stating that the term “shall be interpreted and applied to require a degree of functional limitation that is lower than the standard for “substantially limits” applied prior to the ADAAA.”<sup>14</sup> Thus, the interpretation of this third element relies on legal precedent, including previous cases, and is subject to change. Circling back to regulation 42 U.S.C.A. § 12102, the aforementioned definitions carry their meaning into the remaining requirement for defining disability. When an individual has a record of their impairment or is regarded to have such an impairment, they are still required to show that said impairment limits one or more of their major life activities to be considered disabled under federal law.

*B. Type 1 and Type 2 Diabetes as a Disability*

Using the outline above to determine the definition of disability, both type 1 and type 2 fall under the category of physical disability, as they pass the three-part court analysis test. Type 1 and type 2 diabetes constitute a physical impairment by affecting the endocrine system, substantially limiting one or more major life activities (in the most extreme cases, diabetes can impact a series of items on the list mentioned above such as performing manual tasks, seeing, standing, reading, concentrating, thinking, communicating, and the operation of endocrine and immune system functions). Consequently, type 1 and type 2 diabetes satisfy the requirements to be defined as a physical disability by meeting all the requirements under 42 U.S.C.A. § 12102 and 29 C.F.R. § 1630.2. Diabetes is regarded as a disability under U.S. law and is thus relevant to discuss for the remainder of the paper.

Individuals with diabetes are generally categorized by their pancreas’ inability to produce any or enough insulin for the body. Insulin is a hormone that is essential to the management of blood glucose levels, which becomes increasingly difficult the less insulin the pancreas makes. When insulin production is inefficient or nonexistent, the body cannot regulate blood glucose levels by itself, necessitating medical care and medication.

*C. Implications Concerning the Law*

Fatal symptoms can arise as a result of diabetes, particularly hypoglycemia and

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<sup>14</sup> 29 C.F.R. § 1630.2.

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hyperglycemia, and usually appear at the forefront of court cases and litigation brought by diabetics. Hypoglycemia is defined as a medical condition where blood glucose levels fall below 70 milligrams per deciliter (mg/dL), causing irritability, dizziness, sweating, and a loss of muscle control. These symptoms can be mistaken for alcohol or drug intoxication, as seen in many Title II arrest violation cases regarding diabetics.<sup>15</sup> When left untreated, severe hypoglycemia symptoms limit the body's ability to perform basic tasks and can result in unconsciousness and death. On the other hand, hyperglycemia is a medical condition where blood glucose rises above 200 mg/dL and assumes similar symptoms to those of hypoglycemia as well as thirst, dehydration, blurry vision, and fruity-smelling breath. This can also be mistaken for signs of alcohol use. If hyperglycemia is left untreated ketoacidosis can occur, where the blood becomes acidic, possibly resulting in death.<sup>16</sup>

Symptoms experienced by both individuals with type 1 diabetes and individuals with type 2 diabetes can be falsely understood by law enforcement to be signs of criminal activity, such as driving under the influence and refusing to comply. The fruity-sweet odor of a diabetic individual's breath can be mistaken for the smell of beer. Unresponsiveness due to hypoglycemia and decreased reaction ability can similarly be mistaken for a refusal to cooperate.

## II. THE WRONGFUL ARREST THEORY

### *A. Introduction*

The wrongful arrest theory is commonly called upon in disability law when an individual brings claims of discrimination against law enforcement. However, this theory has yet to be integrated into cases brought by individuals with diabetes, as no individual with diabetes has brought Title II claims fully relying on the wrongful arrest theory. The wrongful arrest theory originated in *Jackson v. Inhabitants of Town of Sanford* and *Lewis v. Truitt*. Many federal courts cite these cases as precedents for current cases and are actively determining the theory's practical applicability and

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

limitations.<sup>17</sup> They both illuminate circumstances when officers “misperceive lawful conducts caused by [an arrestee’s] disability as criminal activity and then arrest [that person] for that conduct.”<sup>18</sup> The usage of the wrongful arrest theory in these cases has augmented the theory’s popularity so that it has become a standard interpretation of the ADA in federal courts. In order to qualify for success under the wrongful arrest theory, the conduct and behavior of the individual at the time of arrest must be considered “lawful conduct attributable to [an individual’s physical or mental disability] that [law enforcement] perceived as unlawful activity.”<sup>19</sup> Although overlooked by litigants in Title II violation cases, especially cases concerning diabetics, the wrongful arrest theory is concrete in that it is “largely uncontroversial because plaintiffs asserting the theory have not engaged in unlawful conduct.”<sup>20</sup> This theory only pertains to cases when the plaintiff is involved in legal conduct at the time of the arrest, otherwise, this theory is not applicable. When it comes to court analysis, courts have disagreed on the matter as to “whether an arrest qualifies as “a program, service or activity” covered by Title II of the ADA.<sup>331.</sup><sup>21</sup> However, the Eleventh Circuit held that 42 U.S.C.A. § 12132 protects individuals with disabilities against subjection “to discrimination by any such entity”<sup>22</sup> and “is not tied directly to the services, programs, or activities of the public entity.”<sup>23</sup> When arguing a case under the wrongful arrest theory, the plaintiff must show that “they were disabled... the defendants knew or should have known that they were disabled, and... the defendants arrested him or her

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<sup>17</sup> See *Felts v. Bd. of Cnty. Commissioners of Valencia Cnty.*, No. 13-CV-1094 MCA/SCY, 2015 WL 13665458, at \*26 (D.N.M. Mar. 30, 2015) (holding that if the police behavior is in response to unlawful actions, in this case an assault, it is not actionable under the ADA); *A.V. through Hanson v. Douglas Cnty. Sch. Dist.* RE-1, 586 F. Supp. 3d 1053 (D. Colo. 2022) (an example of a case where both wrongful arrest and failure to accommodate were granted); *Sacchetti v. Gallaudet Univ.*, 344 F. Supp. 3d 233, 270 (D.D.C. 2018) (reinforces the difficulty of the failure to train claims because it held that the state/government entity had to know about the specific circumstances of the disabled individual at hand)

<sup>18</sup> Jamelia N. Morgan, *Policing Under Disability Law*, 73 *Stan. L. Rev.* 1401, 1429 (2021).

<sup>19</sup> *Hainze v. Richards*, 207 F.3d 795, 800 (5th Cir. 2000)

<sup>20</sup> Robyn Levyn, *Responsiveness to Difference: ADA Accommodations in the Course of an Arrest*, 69 *Stan. L. Rev.* 271, 319(2017).

<sup>21</sup> Sarah Fech and Gregory Murray, *Inappropriate Law Enforcement Response to Individuals with Diabetes* 59 (2014),

<http://main.diabetes.org/dorg/PDFs/Advocacy/Discrimination/atty-intro-guide-law-enforcement-response.pdf>.

<sup>22</sup> 42 U.S.C.A. § 12132 (West).

<sup>23</sup> Fech and Murray, *supra*, at 59.



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because of legal conduct related to his or her disability.”<sup>24</sup> In attempts to decrease ambiguity concerning the second requirement, the defendant’s supposed knowledge about the plaintiff’s disability can be confirmed through the verbal confirmation of said disability by the plaintiff or by a bystander, or by visible medical alert tags, such as bracelets. To gain familiarity with the wrongful arrest theory, and to connect its potential applicability to individuals with diabetes in the courtroom, the following analysis contains case studies concerning successful and unsuccessful *non-diabetic* plaintiffs alleging cases against law enforcement.

*B. Jackson v. Inhabitants of Town of Sanford, No. CIV. 94-12-P-H, 1994 WL 5896176 (D. Me. Sept. 23, 1994)*

*Jackson v. Inhabitants of Town of Sanford* centers around plaintiff Roland Jackson who was involved in a car collision on Main Street in Sanford, Maine. When police arrived on the scene, the other driver in the collision warned Officer Craig Sanford that he believed Jackson to be intoxicated and driving under the influence. In reality, Jackson had suffered symptoms of a prior stroke that led to partial paralysis of his right side and slurred speech. These symptoms, paired with Jackson’s inability to stand still and overall confusion, compelled Officer Sanford to conclude that Jackson was drunk. Upon questioning, Jackson informed Sanford that he had not been drinking, but rather that his actions were the result of a brain aneurysm that produced physical difficulties. Disregarding this, Sanford ordered Jackson to take field sobriety tests, which he failed due to his impairment. Officer Sanford then arrested him on the grounds of Operating Under the Influence of Intoxicating Liquor and/or Drugs (OUI).<sup>25</sup>

Jackson brought this case before the U.S. District Court for the District of Maine, alleging that his arrest should be classified as an act of discrimination “based on his disability” that violates 42. U.S.C. § 12132 and that the town “failed to train its police officers to recognize symptoms of disabilities and failed to modify police policies, practices, and procedures to prevent discriminatory treatment of the disabled, as required by the anti-discrimination regulations” under 42. U.S.C. § 12134.<sup>26</sup> The court noted that Title II “clearly applies to acts of discrimination by a public entity against a

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<sup>24</sup> Fech and Murray, *supra*, at 60.

<sup>25</sup> *Jackson v. Inhabitants of Town of Sanford*, Civ. No. 94-12-P-H, 1994 WL 589617, at \*1 (D. Me. Sept. 23, 1994).

<sup>26</sup> *Id.* at \*6.

disabled individual” and determined that the Town of Sanford and its police officers are considered part of that entity.<sup>27</sup> Using the definition of disability provided by the ADA, the court was also able to reason that Jackson is an individual with a disability as his prior stroke satisfies having a “record of... an impairment.”<sup>28</sup> Jackson’s claim under the wrongful arrest theory met all three of the test’s requirements– (1) his stroke qualified as a legal disability, (2) he explicitly told the officers about his past brain aneurysm, and (3) the officers clearly and completely ignored this fact. Therefore, these claims were recognized as valid under the ADA, and the court denied the defendant’s motion for summary judgment because Jackson was protected under Title II of the ADA and the wrongful arrest theory.

This case concerns the unjust arrest of an individual with a disability even though they were not acting unlawfully. Jackson tried to notify Officer Sanford of his disability before the arrest occurred, and an acknowledgment of such a disability may have been able to de-escalate this encounter in the first place. Despite his symptoms being due to a disability, Jackson was subjected to a dangerous wrongful arrest. The wrongful arrest theory thus proves successful in the courtroom for discussing individuals with disabilities.

C. *Lewis v. Truitt*, 960 F. Supp. 175 (S.D. Ind. 1997)

*Lewis v. Truitt* concerns an action filed under the Americans with Disabilities Agreement by plaintiff Charles Lewis after police officers arrived at his home on a matter concerning the custody of his granddaughter after her mother committed suicide. Charles Lewis suffers from deafness, so when police attempted to converse with him, other individuals at the scene tried to explain that Charles was deaf and would cooperate and respond better to written questions. Defendant Officer Melody G. Truitt in particular ignored their claims that Charles was deaf and refused to accommodate his needs by writing down questions for him despite being aware of his disability. Following Lewis into his home unwelcomed, two officers– including Truitt– physically assaulted Lewis and arrested him on the grounds of Resisting Law Enforcement.<sup>29</sup> When presented in the United States District Court for the Southern District of Indiana, the defendants filed for summary judgment, which the court then

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<sup>27</sup> Jackson v. Inhabitants of Town of Sanford, Civ. No. 94-12-P-H, 1994 WL 589617, at. \*1 (D. Me. Sept. 23, 1994).

<sup>28</sup> 42 U.S.C.A. § 12102.

<sup>29</sup> Lewis v. Truitt, 960 F. Supp. 175, 175 (S.D. Ind. 1997).

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denied as a result of relying on precedent from *Jackson v. Inhabitants of Sanford* (discussed above) and careful analysis of facts.

Charles Lewis meets all of the criteria presented above to be considered an individual with a disability and is thus protected under the provisions of Title II. As a result of his disability, several police officers mistook Lewis' unresponsiveness for uncooperative behavior, even though they were made aware of his disability multiple times and failed to reasonably accommodate him and communicate accordingly. Then, when the physical violence ensued, the police officers unnecessarily escalated the situation and arrested him as a result of his unresponsiveness. Such unresponsiveness is directly correlated to his disability, as the police officers failed to reasonably accommodate Lewis' disability, refusing to communicate with him in a way he could understand. His wrongful arrest also inflicted intense trauma and injuries from the physical interaction on an already vulnerable member of society. The denial of summary judgment motions by the police officers due to Lewis' supposed resistance to law enforcement was because of the officer's clear ignorance of Lewis's deafness; when Lewis did not respond to their questions it was because he could not hear. The wrongful arrest theory therefore applies to this case since (1) Lewis was definitively deaf, (2) the police officers were informed of this and refused to communicate with him in writing, and (3) Lewis' unresponsiveness was because he could not physically hear the officers, which is completely lawful behavior. Similarly to *Jackson v. Inhabitants of Town of Sanford*, this case demonstrates the success for individuals with disabilities that the wrongful arrest theory can bring.

### III. DIABETIC SPECIFIC CASE STUDY

#### A. *Burns v. City of Redwood City*

Douglas Burns, a type 1 diabetic, brought a case to the United States District Court of California, San Francisco against the City of Redwood and defendants Officer Jamie Mateo, Officer David Gough, and Officer Ramiro Perez for violating Title II of the ADA— specifically the Fourth and Fourteenth Amendments— and claimed “negligence, intentional infliction of emotional distress, and batter.”<sup>30</sup> At a local movie theater, Burns suffered from a hypoglycemic attack so severe that it limited his ability to formulate his thoughts and words. As previously explained, symptoms from hypoglycemia can include unresponsiveness, uncooperative behavior, slurring

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<sup>30</sup> Burns v. City of Redwood City, 737 F. Supp. 2d 1047, 1052 (N.D. Cal. 2010).

speech, fruity-smelling breath, and damaged reaction skills. Trying to secure sugar, Burns had some “strange” interactions with some of the staff at the movie theater, which consequently got him removed from the theater by security. With concern about his well-being, Officer Mateo was called to the scene, as well as other officers, on the premise that bystanders alleged he was “on something.”<sup>31</sup> When Officer Mateo approached Burns, Burns was unable to answer questions, since his blood sugar was so low that he could not speak at that moment. Officer Gough appeared shortly thereafter and testified later that “it crossed his mind Burns might be under the influence of drugs or in the midst of a diabetic or other medical emergency,” yet did not ask Burns about this.<sup>32</sup> As the situation continued, Burns ended up stumbling into the officers and was pepper sprayed in the face by Officer Mateo who ordered him to drop to the ground, but Burns could not respond as his disorientation heightened. Officer Perez appeared amidst the chaos and engaged in a physical fight to subdue Burns. Burns was then placed under arrest and was physically fought to the floor by the officers, trying to resist, but ultimately failing.

Before Burns was offered medical attention he was questioned by Officer Mateo, where Burns was able to explain that he was a diabetic, and when EMTs arrived, Burns’ blood sugar was measured at 26 mg/dL, a near-fatal glucose level.<sup>33</sup> Burns was given medical treatment but was still cited for violating “California Penal Code sections 243 (b) and 148: respectively, battery of a police officer and resisting arrest.”<sup>34</sup> This was done *after* Burns’ disability was confirmed by medical personnel and he ultimately sustained significant physical harm and mental distress due to this unlawful arrest. Burns brought claims regarding violations of excessive force, while the defendants Mateo and Gough moved for summary judgment that was later denied. Officer Perez’s motion was granted on the grounds of qualified immunity (defined below).

### *B. Applying The Wrongful Arrest Theory*

No individual with diabetes has brought a case involving ADA Title II violation claims against law enforcement relying on the wrongful arrest theory, but *Burns v. City of Redwood City* is a prime example of a case where the wrongful arrest theory could

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

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have been applicable.<sup>35</sup> As established earlier, a plaintiff must show that they are disabled, that the defendants were informed, knew, or should have known that the plaintiff was disabled, and the defendants arrested the plaintiff because of legal conduct that stemmed from said disability.<sup>36</sup> This test implicates the burden of proof on the plaintiff. Still, because the wrongful arrest theory assumes the plaintiff had not behaved illegally, the burden of proof falls not on showing they did not commit the alleged crimes, but rather on proving the three aforementioned elements are shown.

As Officer Mateo and Gough were not granted summary judgment, this analysis on the applicability of the wrongful arrest theory will focus on Officer Perez's motion for summary judgment and the potential for denial that could have resulted if Burns filed claims under the wrongful arrest theory.

Officer Perez was granted summary judgment because he was eligible for qualified immunity, unlike the other two officers. Qualified immunity is a frequently used defense for law enforcement when claims are brought against them.

Qualified immunity protects government officials from liability under § 1983 when their conduct does not violate 'clearly established statutory or constitutional rights of which a reasonable person would have known' ... unless (1) the facts taken in the light most favorable to the injured party, show that the officer's conduct violated a constitutional right; and (2) the constitutional right was clearly established at the time of the deprivation so that a reasonable officer would understand his conduct was unlawful.<sup>37</sup>

Qualified immunity is a regularly sought-after defense by law enforcement when facing violations as serious as these, and can often be controversial when granted. This adds another obstacle to the plaintiff's burden of proof as the police misconduct must undeniably result in a gross violation of a constitutional right. Under Burns' claims of unreasonable force, Perez was able to secure qualified immunity since he was not found by the court to have violated any constitutional law under excessive force. Although Burns alleged that Perez inflicted physical damages during the altercation, he failed to

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<sup>35</sup> Fech and Murray, *supra* note 23, at 63.

<sup>36</sup> *Id.* at 60.

<sup>37</sup> Gardner v. Bd. of Police Comm'rs for Kansas City, Mo., No. 4:07-CV-00900-DGK, 2012 WL 170969, at \*2 (W.D. Mo. Jan. 20, 2012)

provide any other evidence against Perez under his claims.<sup>38</sup> Using the wrongful arrest theory, Perez would not have been found immune from liability because the ADA established the constitutional rights of individuals with disabilities and Perez inherently violated them by participating in the unlawful arrest of Burns for his diabetic attack symptoms.

To reiterate, to successfully file claims under the wrongful arrest theory, the plaintiff must show that (1) “they were disabled,” (2) “the defendants knew or should have known that they were disabled, and” (3) “the defendants arrested him or her because of legal conduct related to his or her disability.”<sup>39</sup>

Focusing on the first element of the test, Burns had type 1 diabetes, an autoimmune disease that inflicts substantial stress on the endocrine and immune systems of the body. This coincides with the definition of disability mentioned earlier in the paper, fitting within the parameters of codes 42 U.S.C.A. § 12102 and 29 C.F.R. § 1630.2, thus Burns can be said to have a disability. This also alleviates the burden of proof from this element, as Burns is legally defined as having a disability under these federal codes.

The second element concerns whether or not the defendants— in this case, the officers— knew about said disability. Burns was cited after the officers had received confirmation from both Burns himself and a medical professional that he was a diabetic and therefore had a physical disability. This implies that the case falls under disability law and if Burns had claimed under the wrongful arrest theory, Perez and the other officers would have surely violated Burns’ constitutional rights. ADA Title II violations are largely intertwined with the Equal Protection Clause and the Fourteenth Amendment since court precedents have found that arresting an individual with a disability based on actions directly caused by their disability constitutes discrimination, implicating constitutional rights. Arresting and citing Burns *after* they were made aware of his disability conveys that the officers knowingly violated Burns’s constitutional rights. Those rights were also clearly established at the time of the arrest— hence all officers are not entitled to qualified immunity in this case— and the burden of proof is assuaged once again. When a plaintiff successfully files a claim using the wrongful arrest theory, the elements of qualified immunity are not fully satisfied,

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<sup>38</sup> *Burns*, 737 F. Supp. 2d at 1063.

<sup>39</sup> Fech, Sarah, and Gregory Murray. “Inappropriate Law Enforcement Response to Individuals with Diabetes: An ...” *American Diabetes Association*, 2014, <http://main.diabetes.org/dorg/PDFs/Advocacy/Discrimination/atty-intro-guide-law-enforcement-response.pdf>.

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ergo eliminating it as a defense against Title II violations. In Burns' case, since the defendants' motion relied solely on an immunity defense, the motion for summary judgment would sequentially not be granted in their favor.<sup>40</sup>

In terms of the third and final element, the officers arrested and cited Burns for resisting arrest and battery of a police officer.<sup>41</sup> This alleged "battery" refers to when Burns stumbled upon the officers during his hypoglycemic attack. A witness to the altercation testified that "[t]he man stumbled and bumped into a police officer" which resulted in Officer Mateo accelerating the situation and spraying Burns in the face with pepper spray in the midst of a medical emergency.<sup>42</sup> As mentioned previously, a symptom of hypoglycemia is disorientation and decreased motor skills, which Burns was evidently suffering, causing him to unintentionally stumble into the police officer. Hypoglycemia is a matter of life or death, and Burns' primary focus at that moment was getting his blood sugar levels back to a normal range where he could then comply with the officers. The matter of "resisting arrest" was due to increased adrenaline, as his body was sending stress signals that he was going to die and since he could not vocally relay this, he was attempting to relay it physically. The officers arrested him for legal conduct stemming from his disability— his attempts to secure himself sugar for his survival – which they mistook for unlawful conduct.

Based on this analysis, if Burns had alleged claims of Title II violation under the wrongful arrest theory, all motions for summary judgment brought by the defendants, including Perez, would surely have been denied. Burns endured violations of his constitutional rights as an individual with a disability, and the wrongful arrest theory would have illuminated that in court. *Burns v. City of Redwood City* is just one of the many ADA violation cases involving plaintiffs with diabetes that the wrongful arrest theory could have undoubtedly brought justice.

The wrongful arrest theory is applicable here since the plaintiff has a disability and was arrested due to lawful activity that law enforcement perceived to be unlawful. These terms need to be fulfilled to argue for applicability and therefore the wrongful arrest theory would not apply if the plaintiff— even if they had a disability— were engaged in unlawful conduct at the time of the arrest. Furthermore, a plaintiff claiming a Title II violation under the wrongful arrest theory must satisfy all elements of the three-part test to qualify. In the case of *Burns v. City of Redwood City*, all of these elements were met, thus the wrongful arrest theory would prove successful. However,

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<sup>40</sup> *Burns v. City of Redwood City*, 737 F. Supp. 2d 1047, 1061 (N.D. Cal. 2010)

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

if one or more of these elements were not met, the wrongful arrest theory would not apply.

#### IV. LIMITATIONS

Although satisfying the three elements of a successful claim under the wrongful arrest theory is fairly straightforward within these cases presented, this theory is not without its limitations. When a plaintiff brings a case of Title II violations under the wrongful arrest theory against law enforcement, it is usually undisputed that the plaintiff has a disability (the first element). The definition of disability— as described above— is federally defined, leaving little room for ambiguity when satisfying this component. Nonetheless, the second element of the three-part test can be vague in some cases, which sequentially disturbs the third element as well. The second element requires that the police officer needs to know about the plaintiff's disability; however, what constitutes “knowing” or “should have known” is not explicitly stated.<sup>43</sup> This wording can thus lead to debates over what amounts to a police officer's awareness of an individual's disability. The uncertainty in the language of the test infers that courts can determine in either direction what they reasonably believe to be a showing of disability, whether that be a medical alert bracelet or verbal communication. However, if a court is to find that a law enforcement officer was not adequately informed about the person's disability through their interpretation of element two, then element three could be easily rejected as well. Some precedents have analyzed the question of whether or not to prove intentional discrimination under the wrongful arrest theory (element 3), the plaintiff must “show that the defendant arrested him because of legal conduct *that the defendant knows* is related to the plaintiff's disability”; resulting in some courts denying a plaintiff's wrongful arrest claims due to providing “insufficient evidence that [the defendant] knew that [the plaintiff's] actions were related to [their] medical condition.”<sup>44</sup> A plaintiff with a disability could be entitled to justice in their claim against law enforcement, yet, due to the ambiguity of how to interpret the language, courts may loosely apply the parameters of the three-part test in various ways that are unfavorable to the plaintiff.

The Judicial Council of California Civil Jury Instructions (CACI) presents another notable limitation to the wrongful arrest theory by designating a series specifically regarding wrongful arrests, their respective procedure, and how they

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<sup>43</sup> Fech and Murray, *supra* note 35, at 60.

<sup>44</sup> *Everson v. Leis*, 556 F.3d 484, (6th Cir. 2009).



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interact with the idea of probable cause. When a disabled plaintiff files a claim of ADA violation against a police officer, the police officer may be able to find refuge under the defense presented in CACI series 1400; specifically No. 1402. CACI No. 1402 covers the procedure for a wrongful arrest as it relates to probable cause and the reasonable belief of a police officer. It states three main elements:

[1] [Name of defendant] claims the arrest was not wrongful because [he/she/ nonbinary pronoun] had the authority to arrest [name of plaintiff] without a warrant.

[2] [If [name of defendant] proves that [insert facts that, if proved, would constitute reasonable cause to believe that plaintiff had committed a crime in defendant's presence], then [name of defendant] had the authority to arrest [name of plaintiff] without a warrant.]

[or]

[3] [If [name of defendant] proves that [insert facts that, if proved, would establish that defendant had reasonable cause to believe that plaintiff had committed a felony, whether or not a felony had actually been committed], then [name of defendant] had the authority to arrest [name of plaintiff] without a warrant.]<sup>45</sup>

This potential defense wording for law enforcement threatens the third element of the wrongful arrest theory. If conduct is observed that can be reasonably attributable to unlawful behavior, the defendant (police officer) has a right to arrest. This introduces another burden of proof that lies upon the plaintiff, as they now have to prove that the police officer did not have probable cause to make an arrest. When bringing a case against law enforcement to court, a plaintiff must convince a jury that the behavior that led to the plaintiff's arrest was undoubtedly legal and that the police officer did not have probable cause. Furthermore, the CACI instructions demonstrate the social credibility of law enforcement. This again stresses the importance of what is considered "reasonable cause" for an arrest, and what a "reasonable" person would find to be behavior attributable to a disability, implicating the limitation of the second element— knowledge of the disability. Unfortunately, merely informing a police officer of a given disability is not enough to deter the burden of proof that comes with an officer claiming they had probable cause, especially when the disability— such as diabetes— mimics the behavior of a person committing an illegal act and is not exclusive

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<sup>45</sup>Jud. Council of Cal., Civil Jury Instructions 885 (2024).

to the disability. For example, at first glance, it may be difficult for a police officer to decipher whether a person is experiencing the symptoms of a hyper/hypoglycemic attack or if they are under the influence of drugs or alcohol.

This limitation depends on the verifiability of the plaintiff's claim that they are a diabetic. A solution to this limitation relies on strengthening the shield the plaintiff has against the police officer, making it imperative that the solution eliminate the medical element from the situation to avoid a potential arrest based on conduct attributable to the plaintiff's disability. One such way of doing this is to create a network of documented information that can verify the individual's claims, such as a national disability registry or license plate identifiers. Time is of the essence in these situations, and the individual with a disability might be in dire need of medical assistance. Having the officer look up an individual in a registry stops the arrest in its tracks. With the possibility of information that confirms the individual's claims, this identification may ensure the automatic transport to a medical facility before an arrest can be made, in turn eliminating the diabetic variable in the case from that point forward. Again, this is especially important for diabetics because this disability is not obvious and imitates something that officers arrest for all the time. Another way to solve the issue of the second element's ambiguity is to attempt to amend the rule itself. Although this may be more difficult, establishing the rule using more precise language and specified parameters of what constitutes a defendant's knowledge of the plaintiff's disability would aid in eradicating confusion concerning the second element. These two potential solutions directly target the CACI 1400 series, weakening the "probable cause" defense that can be used by law enforcement when they violate an individual's Title II rights. By narrowing the parameters of what can be "reasonable belief" to arrest in cases such as *Burns*, justice is more attainable for these mistreated plaintiffs.

The wrongful arrest theory can be effective for claims of Title II violations against police officers, especially in overcoming obstacles such as qualified immunity; however, to do this successfully the plaintiff must *clearly* demonstrate that all three factors were met and that there was no probable cause for the arrest. The wrongful arrest theory may be the subject of a small area of jurisdiction given the ambiguity of the second element and may be a factor as to why this theory is not as popular as other theories such as excessive force.

## **CONCLUSION**

Individuals with diabetes are underrepresented in the discourse about disability law, especially considering how many cases concern diabetics. Type 1 and type 2

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diabetes affect a considerable number of people in the U.S. and have potential life or death severity, yet disability law is rarely tailored specifically to it. In order for justice to be served for frequent arrest misconduct concerning this protected community, research surrounding the wrongful arrest theory is crucial. This research will consequently give way to new educational procedures for both individuals with disabilities and law enforcement. When a violation of a diabetic individual's Title II rights occurs, that individual should be knowledgeable about the wrongful arrest theory as a successful claim for justice. Other common strategies for Title II violation claims such as "failure to train" are difficult to prove at the individual level because courts have found that this falls on the institution, not the individual, creating a severe burden of proof. Nevertheless, law enforcement should be educated on recognizing signs of life-threatening hyperglycemic and hypoglycemic attacks and trained like other emergency personnel to avoid wrongful arrests because of medical emergencies.

The wrongful arrest theory presents as a largely uncontroversial form of argument when applied to cases regarding police misconduct in disability law, as the plaintiffs are not engaged in any unlawful conduct before, during, or after the arrest. The wrongful arrest theory is common in U.S. federal law, with cases such as *Lewis v. Truitt* and *Jackson v. Inhabitants of Town of Sanford* aiding in popularizing the wrongful arrest theory as a federally accepted interpretation of the ADA where there are wrongful arrest claims. However, this is not sufficient to compensate for the lack of application of the wrongful arrest theory in cases where diabetics are arrested due to legal conduct resulting from their disability. To achieve justice within disability law, the wrongful arrest theory should be applied more to cases involving individuals with diabetes.

The analysis of the aforementioned diabetic-specific case *Burns v. City of Redwood City* elucidates the wrongful arrest theory's usefulness in disability law concerning individuals with diabetes. Diabetes affects the endocrine, nervous, and immune systems of an individual and can produce symptoms such as hypoglycemia and hyperglycemia resulting in behavior that can be misperceived as intoxication. Having a disability is no grounds for arrest, and familiarization with the wrongful arrest theory in disability law regarding diabetics will ensure an individual's lawful success against misconduct and discrimination resulting from their disability.