

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1119 Intellectual Disabilities
SPONSOR(S): Adkins and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 142

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Healthy Families Subcommittee	11 Y, 0 N	Entress	Schoolfield
2) Health & Human Services Committee	17 Y, 0 N	Entress	Calamas

SUMMARY ANALYSIS

The terms “mental retardation” and “mentally retarded” are used throughout Florida Statutes. The bill replaces the term “mental retardation” with the term “intellectual disability” and replaces the term “mentally retarded” with the term “intellectually disabled” in areas of state law. The bill also replaces the term “Association for Retarded Citizens” with the “Arc of Florida” and the term “handicapped” with “disability.”

The bill clarifies that the term “intellectual disability” and “intellectually disabled” are interchangeable and have the same meaning as the terms “mental retardation” or “retardation” and “mentally retarded” as currently defined for purposes of the application of criminal laws and procedural rules to matters relating to pretrial, trial, sentencing, and any matters relating to the imposition and execution of the death penalty.

The bill clarifies that the Legislature does not intend to expand or contract the scope or application of any provision of Florida Statutes and that the bill may not be construed to change the application of any provision of Florida Statutes.

The bill has no fiscal impact.

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The word “retarded” has evolved into a derogatory term. The Joseph P. Kennedy Jr. Foundation for the Benefit of Persons with Intellectual Disabilities has partnered with the Special Olympics, Best Buddies, and over 200 organizations worldwide to support a campaign to end “the R word.”¹ The campaign asks people to pledge to stop saying “the R-word” as a starting point toward creating more accepting attitudes and communities for all people due to its offensive and derogatory association.²

In 2010, President Obama signed “Rosa’s Law,” which removes the terms “mental retardation” and “mentally retarded” from Federal health, education, and labor policy and replaces the terms with “individual with an intellectual disability” and “intellectually disabled.” Currently, all but seven states have either passed laws or presented legislation to remove references to the word “retarded” from state statutes.³

Florida Arc

Florida Arc is a nonprofit advocacy organization for individuals with intellectual and developmental disabilities.⁴ Florida Arc is part of the national organization, the Arc of the United States. The Arc began in 1953 as the “National Association for Retarded Children.” The name has evolved and was changed to “the Arc” in 1992.

The Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)

The Diagnostic and Statistical Manual of Mental Disorders (DSM) is a manual used by clinicians and researchers to diagnose and classify mental disorders.⁵ The current version of the DSM (the DSM-IV) defines the term mental retardation and specifies four levels of mental retardation: Mild Mental Retardation (IQ levels of 50-55 to approximately 70), Moderate Mental Retardation (IQ levels of 35-40 to 50-55), Severe Mental Retardation (IQ levels of 20-25 to 35-40), and Profound Mental Retardation (IQ levels below 20-25).⁶ A new version of the DSM, the DSM-V, will be published in 2013 and removes the term “mental retardation” and replaces it with “intellectually disability”.⁷

Florida Laws

The term “mental retardation” or “retardation” is used in numerous places of Florida Statutes. Some of the significant examples of use include the following:

Florida Law prohibits the death sentence for a defendant convicted of a capital felony if the defendant has mental retardation.⁸ Mentally retarded is defined in Chapter 921, F.S., as an individual with:

¹ “The R-word” campaign is aimed at ending the use of the word “retarded.”

² “The R-word” Campaign, *accessible at*: <http://www.r-word.org/r-word-why-pledge.aspx> (last accessed March 19, 2013).

³ Inclusive Language Legislation, “The R-word” Campaign, *accessible at*: <http://www.r-word.org/contact-your-local-government.aspx> (last accessed March 19, 2013).

⁴ About the Arc, The Arc of Florida, *accessible at*:

http://www.arcflorida.org/index.php?option=com_content&view=category&layout=blog&id=5&Itemid=2 (last accessed March 20, 2013).

⁵ Intellectual Disability, American Psychiatric Publisher, *accessible at*: <http://www.psych.org/File%20Library/Practice/DSM/DSM-5/DSM-5-Intellectual-Disability-Fact-Sheet.pdf> (last accessed March 19, 2013),

⁶ DSM-IV

⁷ Intellectual Disability, American Psychiatric Publisher, *accessible at*: <http://www.psych.org/File%20Library/Practice/DSM/DSM-5/DSM-5-Intellectual-Disability-Fact-Sheet.pdf> (last accessed March 19, 2013).

⁸ S. 921.137(2), F.S.

“significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term “significantly subaverage general intellectual functioning,” for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Agency for Persons with Disabilities. The term “adaptive behavior,” for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.”⁹

A defendant charged with a capital felony who intends to raise mental retardation as a bar to the death sentence must give notice of such intention in accordance with the rules of court. The notice informs the court of intent to offer expert testimony regarding mental health mitigation during the penalty phase of a trial. The court then must appoint two experts in the field of mental retardation to evaluate the defendant and report their findings to the court. If the court finds, by clear and convincing evidence, that the defendant has mental retardation, the court may not impose the death penalty.¹⁰

Chapter 393.063, F.S., provides a definition of “retardation” which is also included in the definition of a developmental disability. According to s. 393.063(15), F.S., “retardation” means:

“significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior that manifests before the age of 18 and can reasonably be expected to continue indefinitely. “Significantly subaverage general intellectual functioning,” for the purpose of this definition, means performance which is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency. “Adaptive behavior,” for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.”¹¹

This definition is used by the Agency for Persons with Disabilities in part to determine if an individual has a developmental disability and would therefore be eligible for service under chapter 393, F.S.¹² In addition, the definition is used to determine if an individual is incompetent to proceed to trial in criminal proceedings which are governed by chapter 916, Florida Statutes.¹³

Effect of Proposed Changes

The bill replaces the term “mental retardation” with the term “intellectual disability” and replaces the term “mentally retarded” with the term “intellectually disabled” in the following areas of state law:

- Notice, process, and service of judicial proceedings related to children, s. 39.502, F.S.
- Disqualification or excused from jury service, s. 40.013, F.S.
- Actions fiduciary individuals in the administration of a trust, guardianship, or estate of individuals, who are mentally incompetent, s. 86.041, F.S.
- Videotaping the testimony of a victim or witness who is mentally retarded, s. 92.53, F.S.
- Use of closed circuit television in proceedings involving a victim or witness with mental retardation, s. 92.54, F.S.
- Judicial or other proceedings involving victims or witnesses with mental retardation, s. 92.55, F.S.
- Requirement of the Department of Health to administer and provide certain services, s. 383.14, F.S.
- Definitions related to developmental disabilities, s. 393.063
- Involuntary admission to residential services, s. 393.11, F.S.

⁹ S. 921.137, F.S.

¹⁰ *Id.*

¹¹ S. 393.063(32), F.S.

¹² S. 20.197(3), F.S.

¹³ S. 916.301, F.S.

- Definitions related to mental health, s. 394.455, F.S.
- Reimbursement of Medicaid Providers, s. 409.908, F.S.
- Definitions related to Vocational Rehabilitation, s. 413.20, F.S.
- Limitation of liability for subsequent injury through Special Disability Trust Fund, s. 440.49, F.S.
- Exemptions of advertising and labeling of drugs, devices, and cosmetics, s. 499.0054, F.S.
- Handicapped Children, s. 627.6041, F.S.
- Handicapped Children, s. 627.6615, F.S.
- Health maintenance contracts, s. 641.31, F.S.
- Plans for coverage of employees of political subdivisions, s. 650.05, F.S.
- Capacity of principal, s. 765.204, F.S.
- Permitting minors and persons under guardianship to gamble, s. 849.04, F.S.
- Child abuse and sexual abuse of victims with mental retardation, s. 914.16, F.S.
- Appointment of advocate for victims or witnesses with mental retardation, s. 914.17, F.S.
- Legislative intent of mentally deficient and mentally ill defendants related to criminal procedures and protections statute, s. 916.105, F.S.
- Definitions relating to mentally deficient and mentally ill defendants related to criminal procedures and protections statute, s. 916.106, F.S.
- Right to individual dignity regarding the rights of forensic clients, s. 916.107, F.S.
- Appointment of experts, s. 916.301, F.S.
- Mental competence to proceed, s. 916.3012, F.S.
- Involuntary commitment of defendant determined to be incompetent to proceed, s. 916.302, F.S.
- Jurisdiction of committing court, s. 916.3025, F.S.
- Determination of incompetency due to retardation or autism, s. 916.303, F.S.
- Conditional release, s. 916.304, F.S.
- Sex offenses; testimony of persons with mental retardation, s. 916.16, F.S.
- Prohibition of the imposition of the death sentence upon a defendant with mental retardation, s. 921.137, F.S.
- Extradition of persons alleged to be of unsound mind, s. 941.38, F.S.
- Agency notification before release of mentally retarded inmates, s. 944.602, F.S.
- Jurisdiction of the department, s. 945.025, F.S.
- Transfers for rehabilitative treatment, s. 945.12, F.S.
- Definitions related to the Department of Corrections, s. 945.42, F.S.
- Application for mental retardation services as condition of parole, s. 947.185, F.S.
- Medical screening and treatment of child, s. 984.19, F.S.
- Intake and case management system, s. 985.14, F.S.
- Responsibilities of juvenile probation officer during intake; screenings and assessments, s. 985.145, F.S.
- Medical, psychiatric, psychological, substance abuse, and educational examination and treatment, s. 985.18, F.S.
- Incompetency in juvenile delinquency cases, s. 985.19, F.S.
- Transfer to other treatment services, s. 985.195, F.S.

The bill replaces the term “Association for Retarded Citizens” with the term “Arc of Florida” in the following areas of state law:

- Judicial proceedings related to children, s. 39.502, F.S.
- Motor vehicle license tax exemptions, s. 320.10, F.S.

The bill replaces the term “handicapped” with “disability” in the following areas of state law:

- Handicapped Children, s. 627.6041, F.S.
- Handicapped Children, s. 627.6615, F.S.
- Health maintenance contracts, s. 641.31, F.S.

The bill clarifies that the term “intellectual disability” and “intellectually disabled” are interchangeable and have the same meaning as the terms “mental retardation” or “retardation” and “mentally retarded”

as defined in s. 393.063, F.S. and in s. 921.137, F.S., as defined before July 1, 2013. This clarification pertains to the application of criminal laws and procedural rules to matters relating to pretrial, trial, sentencing, and any matters relating to the imposition and execution of the death penalty.

The bill clarifies that the Legislature does not intend to expand or contract the scope or application of any provision of Florida Statutes and that the bill may not be construed to change the application of any provision of Florida Statutes to any person.

The bill directs that part III, chapter 916, Florida Statutes be renamed as "Forensic Services for Persons who are Intellectually Disabled or Autistic."

B. SECTION DIRECTORY:

- Section 1:** Amends s. 39.502, F.S., relating to notice, process and service.
- Section 2:** Amends s. 40.013, F.S., relating to persons disqualified or excused from jury service.
- Section 3:** Amends s. 86.041, F.S., relating to actions by executors, administrators, trustees, etc.
- Section 4:** Amends s. 92.53, F.S., relating to videotaping of testimony of victim or witness under age 16 or person with mental retardation.
- Section 5:** Amends s. 92.54, F.S., relating to use of closed circuit television in proceedings involving victims or witnesses under the age of 16 or persons with mental retardation.
- Section 6:** Amends s. 92.55, F.S., relating to judicial or other proceedings involving victim or witnesses under the age of 16 or person with mental retardation; special protections; use of registered service or therapy animals.
- Section 7:** Amends s. 320.10, F.S., relating to exemptions.
- Section 8:** Amends s. 383.14, F.S., relating to screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors.
- Section 9:** Amends s. 393.063, F.S., relating to definitions.
- Section 10:** Amends s. 393.11, F.S., relating to involuntary admission to residential services.
- Section 11:** Amends s. 394.455, F.S., relating to definitions.
- Section 12:** Amends s. 400.960, F.S., relating to definitions.
- Section 13:** Amends s. 408.032, F.S., relating to definitions relating to Health Facility and Services Development Act.
- Section 14:** Amends s. 409.908, F.S., relating to reimbursement of Medicaid providers.
- Section 15:** Amends s. 413.20, F.S., relating to definitions.
- Section 16:** Amends s. 440.49, F.S., relating to limitation of liability for subsequent injury through Special Disability Trust Fund.
- Section 17:** Amends s. 499.0054, F.S., relating to advertising and labeling of drugs, devices, and cosmetics; exemptions.
- Section 18:** Amends s. 514.072, F.S., relating to certification of swimming instructors for people who have developmental disabilities.
- Section 19:** Amends s. 627.6041, F.S., relating to handicapped children.
- Section 20:** Amends s. 627.6615, F.S., relating to handicapped children.
- Section 21:** Amends s. 641.31, F.S., relating to health maintenance contracts.
- Section 22:** Amends s. 650.05, F.S., relating to plans for coverage of employees of political subdivisions.
- Section 23:** Amends s. 765.204, F.S., relating to capacity of principal; procedure.
- Section 24:** Amends s. 849.04, F.S., relating to permitting minors and persons under guardianship to gamble.
- Section 25:** Amends s. 914.16, F.S., relating to child abuse and sexual abuse of victims under the age of 16 or persons with mental retardation.
- Section 26:** Amends s. 914.17, F.S., appointment of advocate for victims or witnesses who are minors or persons with mental retardation.
- Section 27:** Amends s. 916.105, F.S., relating to legislative intent.
- Section 28:** Amends s. 916.106, F.S., relating to definitions.
- Section 29:** Amends s. 916.107, F.S., relating to rights of forensic clients.
- Section 30:** Requests that part III of chapter 916 is renamed.
- Section 31:** Amends s. 916.301, F.S., relating to appointment of experts.
- Section 32:** Amends s. 916.3012, F.S., relating to mental competence to proceed.

- Section 33:** Amends s. 916.302, F.S., relating to involuntary commitment of defendant determined to be incompetent to proceed.
- Section 34:** Amends s. 916.3025, F.S., relating to jurisdiction of committing court.
- Section 35:** Amends s. 916.303, F.S., relating to determination of incompetency due to retardation or autism; dismissal of charges.
- Section 36:** Amends s. 916.304, F.S., relating to conditional release.
- Section 37:** Amends s. 918.16, F.S., relating to sex offenses; testimony of person under age 16 or person with mental retardation; testimony of victim; courtroom cleared; exceptions.
- Section 38:** Amends s. 921.137, F.S., relating to imposition of the death sentence upon a defendant with mental retardation prohibited.
- Section 39:** Amends s. 941.38, F.S., relating to extradition of persons alleged to be of unsound mind.
- Section 40:** Amends s. 944.602, F.S., relating to agency notification before release of mentally retarded inmates.
- Section 41:** Amends s. 945.025, F.S., relating to jurisdiction of the department.
- Section 42:** Amends s. 945.12, F.S., relating to transfers for rehabilitative treatment.
- Section 43:** Amends s. 945.42, F.S., relating to definitions.
- Section 44:** Amends s. 947.185, F.S., relating to application for mental retardation services as condition of parole.
- Section 45:** Amends s. 984.19, F.S., relating to medical screening and treatment of child; examination of parent, guardian, or person requesting custody.
- Section 46:** Amends s. 985.14 F.S., relating to intake and case management system.
- Section 47:** Amends s. 985.145, F.S., relating to responsibilities of juvenile probation officer during intake; screenings and assessments.
- Section 48:** Amends s. 985.18, F.S., relating to medical, psychiatric, psychological, substance abuse, and educational examination and treatment.
- Section 49:** Amends s. 985.19, F.S., relating to incompetency in juvenile delinquency cases.
- Section 50:** Amends s. 985.195, F.S., relating to transfer to other treatment and services.
- Section 51:** Amends s. 985.61, F.S., relating to early delinquency intervention programs; criteria.
- Section 52:** Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.

2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.

2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES