

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Criminal Justice

BILL: CS/SB 142

INTRODUCER: Criminal Justice Committee and Senators Altman and Sobel

SUBJECT: Intellectual Disabilities

DATE: April 1, 2013

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peterson	Hendon	CF	Favorable
2.	Cellon	Cannon	CJ	Fav/CS
3.			RC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
 B. AMENDMENTS..... Technical amendments were recommended
 Amendments were recommended
 Significant amendments were recommended

I. Summary:

CS/SB 142 substitutes the term “intellectual disability” for “mental retardation” throughout the Florida Statutes. The bill specifies that as the new terminology is applied in the pretrial, trial, sentencing, and death penalty areas of the criminal law, the terms “intellectual disability” or “intellectually disabled” are interchangeable with the terms “mental retardation” or “retardation” and “mentally retarded” as previously defined.

This bill also substitutes “the Arc of Florida” for “the Association for Retarded Citizens” to reflect the correct name of the organization.

This bill will not have a fiscal impact on the state and has an effective date of July 1, 2013.

This bill amends the following sections of the Florida Statutes: 39.502, 40.013, 86.041, 92.53, 92.54, 92.55, 320.10, 383.14, 393.063, 393.11, 394.455, 400.960, 408.032, 409.908, 413.20, 440.49, 499.0054, 514.072, 627.6041, 627.6615, 641.31, 650.05, 765.204, 849.04, 914.16, 914.17, 916.105, 916.106, 916.107, 916.301, 916.3012, 916.302, 916.3025, 916.303, 916.304, 918.16, 921.137, 941.38, 944.602, 945.025, 945.12, 945.42, 947.185, 984.19, 985.14, 985.145, 985.18, 985.19, 985.195, and 985.61.

II. Present Situation:

Mental Retardation

Mental retardation is a condition or syndrome defined by a collection of symptoms, traits, and characteristics. Under the most current Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), the term mental retardation means a significantly subaverage intellectual functioning, such as an IQ of approximately 70 or below, and concurrent deficits of impairment in present adaptive functioning¹ in at least two of the following areas:

- Communication
- Self-care
- Home living
- Social or interpersonal skills
- Use of community resources
- Self-direction
- Functional academic skills
- Work
- Leisure
- Health
- Safety²

Onset of the disability occurs before age 18.³

Mental retardation has been defined and renamed many times. For example, in 1910, three levels of mental retardation were identified: idiot, imbecile, and moron.⁴ Additionally, feeble-mindedness and mental deficiency were used as labels for mental retardation during the late 19th and early 20th century.⁵

The Arc of the United States, an organization that advocates for and serves people with intellectual and developmental disabilities, changed its name in 1992⁶ to reflect contemporary sensibilities. The Arc notes:

The term “mental retardation” is an out-dated term that may offer some protections in some states, however, with the passage of Rosa’s Law in 2010,

¹ According to the DSM-IV, adaptive functioning relates to the person’s effectiveness in meeting the standards expected for his or her age by his or her cultural group. American Psychiatric Association, DSM-IV 42 (March 2010).

² *Id.* at 41.

³ *Id.*

⁴ Fred J. Biasini, *et al.*, Department of Psychology, University of Alabama at Birmingham, *Mental Retardation: A Symptom and a Syndrome*, available at <http://www.ibis-birthdefects.org/start/mentalSyndrome.htm> (last visited Jan. 29, 2013).

⁵ *Id.*

⁶ Prior to becoming The Arc of the United States, the organization was called the Association for Retarded Citizens of the United States. The Arc, *History of Name Changes*, available at <http://www.thearc.org/page.aspx?pid=2344> (last visited Jan. 25, 2013). In 2007, the Association for Retarded Citizens of Florida, Inc., adopted the fictitious name The Arc of Florida, and the organization officially changed its name in 2010. The Arc of Florida, *About the Arc, History*, available at http://arcflorida.org/index.php?option=com_content&view=category&layout=blog&id=5&Itemid=2 (last visited Jan. 25, 2013).

many states have replaced all terminology from mental retardation to intellectual disability. Although some still use the term “mental retardation” to be eligible for some services in a few states, in no case does having the label guarantee that supports will be available. The Arc does not encourage the use of nor promote the term mental retardation. The general public, including families, individuals, funders, administrators, and public policymakers at local, state and federal levels, are becoming aware of how offensive the term is⁷

Other organizations in the United States, such as United Cerebral Palsy, take similar positions on use of this term.⁸ In addition, the State of Washington enacted legislation in 2010 amending its statutes to make the change to “intellectual disability.”⁹

The American Psychiatric Association (APA), the organization that publishes the DSM, has undertaken a complete revision of the DSM-IV, which was originally published in 1994.¹⁰ The APA has proposed renaming “mental retardation” as “intellectual developmental disorder” in order to be consistent with current practice.¹¹ The new criteria will be released in May 2013.¹²

Current Statutory Definitions

Section 921.137, F.S., which prohibits the imposition of the death penalty on a mentally-retarded defendant, states:

“Mental retardation” means 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. The Agency for Persons with Disabilities shall

⁷ The Arc, *Introduction to Intellectual Disabilities* (revised Mar. 1, 2011), available at <http://www.thearc.org/page.aspx?pid=2448> (last visited Jan. 23, 2013). “Rosa’s Law” amended the language in all federal health, education, and labor laws to remove the phrase “mentally retarded” and substitute the phrase “intellectual disability.” Press Release, The White House *Remarks by the President at the Signing of the 21st Century Communications and Video Accessibility Act of 2010* (Oct. 8, 2010), available at <http://www.whitehouse.gov/the-press-office/2010/10/08/remarks-president-signing-21st-century-communications-and-video-accessib> (last visited Feb. 4, 2013).

⁸ See United Cerebral Palsy, *Legislative Agenda for the 112th Congress*, available at <http://www.ucp.org/public-policy/legislative-agenda> (last visited Jan. 25, 2013); American Association on Intellectual and Developmental Disabilities, *Definition of Intellectual Disability*, available at http://www.aaid.org/content_100.cfm?navID=21 (last visited Jan. 25, 2013).

⁹ See Revised Code of Washington 44.04.280.

¹⁰ American Psychiatric Association *Overview DSM-5 Development*, available at <http://www.dsm5.org/ABOUT/Pages?DSMVOverview.aspx> (last visited Jan. 25, 2013).

¹¹ American Psychiatric Association, *Intellectual Disability* (Dec. 18, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹² American Psychiatric Association, *DSM-5 Development, Timeline*, available at <http://www.dsm5.org/about/Pages/Timeline.aspx> (last visited Feb. 4, 2013).

adopt rules to specify the standardized intelligence tests as provided in this subsection.

The definition used in the death penalty statute is taken from the definition of “retardation” in ch. 393, F.S., the area of law relating to developmental disabilities, which defines retardation as:

[S]ignificantly 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.¹³

The statutory definition of developmental disability indicates that it *is* attributable to mental retardation, among other conditions. Section 393.063(9), F.S., defines “developmental disability” as:

[A] disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

Individuals with developmental disabilities may be eligible for a variety of home and community based services through the Agency for Persons with Disabilities and other state and federal entities.

The term “intellectual disability” is not currently defined in the Florida Statutes, although the term is defined, and is interchangeable with the term “mental retardation,” pursuant to Rule 65G-4.014(3) of the Florida Administrative Code. The Rule, states:

Mental Retardation or Intellectual Disability – is evidenced by the concurrent existence of:

- (a) Significantly subaverage general intellectual functioning evidenced by an Intelligence Quotient (IQ) two or more standard deviations below the mean on an individually administered standardized intelligence test, and
- (b) Significant deficits in adaptive functioning in one or more of the following areas:
 1. Communication skills,
 2. Self-care, home living,
 3. Social and interpersonal skills,
 4. Use of community resources and self-direction,
 5. Functional academic skills,
 6. Work, leisure, health and safety awareness and skills,

¹³ Section 393.063(32), F.S.

- (c) Which are manifested prior to age 18; and
- (d) Constitute a substantial handicap which is reasonably expected to continue indefinitely.

In 2008, the term “intellectual disability” was substituted for the term “mentally handicapped” in the definition of “exceptional student” as the term is used in the statutes creating the McKay Scholarship Program.¹⁴

III. Effect of Proposed Changes:

This bill substitutes the term “intellectual disability” for “mental retardation” throughout the Florida Statutes. Specifically, the term “intellectual disability” is being used in statutes pertaining to:

- Persons disqualified or excused from jury service (s. 40.013, F.S.);
- Actions by executors, administrators, trustees, etc. (s. 86.041, F.S.);
- Certain judicial or other proceedings involving victims or witnesses under the age of 16 or person with mental retardation (ss. 92.53, 92.54, and 92.55, F.S.);
- Screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors (s. 383.14, F.S.);
- Developmental Disabilities (ss. 393.063 and 393.11, F.S.);
- Mental Health (s. 394.455, F.S.);
- Intermediate Care Facilities for Developmentally Disabled Persons (s. 400.960, F.S.);
- Medicaid (s. 409.908, F.S.);
- Vocational Rehabilitation (s. 413.20, F.S.);
- Special Disability Trust Fund (s. 440.49, F.S.);
- Advertising and labeling of drugs, devices, and cosmetics; exemptions (s. 499.0054, F.S.);
- Insurance (ss. 627.6041, 627.6615, 641.31, and 650.05, F.S.);
- Health Care Surrogates (s. 765.204, F.S.);
- Gambling (s. 849.04, F.S.);
- Criminal proceedings relating to victims under age 16 or persons with mental retardation (ss. 914.16, 914.17, and 918.16, F.S.);
- Mentally Deficient and Mentally Ill Defendants (ss. 916.105, 916.106, 916.107, 916.301, 916.302, 916.3025, 916.303, and 916.304, F.S.);
- Prohibition on 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.);

¹⁴ “Exceptional student” means any student who has been determined eligible for a special program in accordance with rules of the State Board of Education. The term includes students who are gifted and students with disabilities who have an intellectual disability; autism spectrum disorder; a speech impairment; an orthopedic impairment; an other health impairment; traumatic brain injury; a visual impairment; an emotional or behavioral disability; or a specific learning disability, including, but not limited to, dyslexia, dyscalculia, or developmental aphasia; students who are deaf or hard of hearing or dual sensory impaired; students who are hospitalized or homebound; children with developmental delays are mentally handicapped, speech and language impaired, deaf or hard of hearing, visually impaired, dual sensory impaired, physically impaired, emotionally handicapped, specific learning disabled, hospital and homebound, autistic, developmentally delayed children, ages birth through 5 years, or children, ages birth through 2 years, with established conditions that are identified in State Board of Education rules pursuant to s. 1003.21(1)(e). Chapter 2008-204, s. 3, Laws of Fla.

- Department of Corrections and State Correctional Institution (ss. 944.602, 945.025, 945.12, and 945.42, F.S.);
- Application for mental retardation services as condition of parole (s. 947.185, F.S.);
- Children and Families in Need of Services (s. 984.19, F.S.); and
- Juvenile Justice; Interstate Compact on Juveniles (ss. 985.14, 985.145, 985.18, 985.19, 985.195, and 985.61, F.S.)

The bill does not make substantive changes to any of the statutes so revised.

The bill also amends ss. 39.502 and 320.10, F.S., by replacing the name “the Association for Retarded Citizens” with “the Arc of Florida” to reflect the current name of the organization.

The bill includes legislative intent in order to avoid any potential confusion which might arise as the new term is applied because the American Psychiatric Association has not yet released the DSM-5, formally adopting the term “intellectual disability” rather than “mental retardation,” and because use of the term “intellectual disability” has not yet become universal. Specifically:

- The changes made by the bill are not intended to expand or contract the scope of the Florida Statutes; and
- The bill may not be construed to change the application of any provision of the Florida Statutes to any person.

In addition, the bill clarifies that as the new terminology is applied in the pretrial, trial, sentencing, and death penalty areas of the criminal law, it has the same meaning and is interchangeable with the terms “mental retardation,” “retardation,” and “mentally retarded.”¹⁵

The bill makes a number of technical corrections to the Florida Statutes, including:

- Removing definitions, from part VIII of ch. 400, F.S., of terms that are no longer used in that part;
- Removing obsolete grandfathering language from s. 514.072, F.S., relating to certification of swimming instructors for people with developmental disabilities; and
- Renaming part III of ch. 916, F.S., as “Forensic Services for Persons who are Intellectually Disabled or Autistic.”

Finally, the bill amends s. 408.032, F.S., to provide that an “intermediate care facility for the developmentally disabled” means a residential facility licensed under part VIII of ch. 400, F.S., rather than under ch. 393, F.S.

The bill does not have any fiscal impact to the state and provides an effective date of July 1, 2013.

¹⁵ See sections 9 and 38 of the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

In the past, the Department of Corrections (DOC or department), has indicated that the bill would require revisions to be made to the department's procedures, health services bulletins, and Offender Based Information System codes because they reference the standardized professional terminology and diagnostic codes set forth in the DSM-IV.¹⁶ Other agencies may need to make similar changes. However, these changes will be required regardless of when the DSM-V manual is released with the revised definition.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁶ Tommy Maggitas, Department of Corrections, *SB 460-Intellectual Disabilities* (Jan. 10, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on April 1, 2013:

Changed “2012” to “2013” on line 1635. This amendment corrected a technical problem with the date of the application of the new terms set forth in the bill (intellectual disability and intellectually disabled).

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
