

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 Criminal Justice Committee

BILL: CS/CS/SB 1388

INTRODUCER: Criminal Justice Committee; Children, Families, and Elder Affairs Committee; and Senator Haridopolos

SUBJECT: Intellectual Disabilities

DATE: April 13, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Walsh	Walsh	CF	Fav/CS
2.	Cellon	Cannon	CJ	Fav/CS
3.			JU	
4.			HA	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Committee Substitute for Senate Bill 1388 substitutes the term “intellectual disability” for “mental retardation” throughout the Florida Statutes; no substantive changes are made to any of the statutes.

The bill substitutes “the Arc of Florida” for “the Association for Retarded Citizens” to reflect the correct 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. It further clarifies that as the new terminology is applied in the pretrial, trial, sentencing and death penalty areas of the criminal law, the new terminology has the same meaning and is interchangeable with the terms that are changed by the bill.

This bill substantially amends ss. 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, F.S.

II. Present Situation:

“Mental Retardation”

Mental retardation is a condition or syndrome defined by a collection of symptoms, traits, and/or characteristics. It has been defined and renamed many times. For example, feeble-mindedness and mental deficiency were used as labels during the late 19th and early 20th century.¹

The Arc of the United States, an organization advocating on behalf of those with intellectual and developmental disabilities, changed its name in 1992^{2,3} to reflect and affect contemporary sensibilities. They note:

The Arc’s mission statement does not use the term “mental retardation.” ... The term “mental retardation” was offensive to many people, so we changed our language.

The term “mental retardation” offers special protections in key areas of federal and state policy, including death penalty prosecutions and SSI administrative processes. ... People still need to use the term “mental retardation” to be eligible for some services in a few states, but in no case does having the label guarantee that supports will be available.

The Arc does not encourage states, officials, families or individuals to use or promote the term “mental retardation.” The general public, including families, individuals, funders, administrators, and public policymakers at local, state and federal levels, are not necessarily aware that the term “mental retardation” is offensive and outdated.⁴

Other organizations in the U.S., including United Cerebral Palsy, take similar positions on use of this term. The State of Washington recently enacted legislation amending its statutes to make the change to “intellectual disability.”⁵

The American Psychiatric Association (APA) publishes the Diagnostic and Statistical Manual of Mental Disorders DSM. It includes a definition of mental retardation which has been widely adopted in the U.S. The APA has undertaken a complete revision of the current edition, the DSM-IV, published in 1994.⁶ They have proposed renaming “mental retardation” as “intellectual

¹ Biasini, Fred J., Grupe, Lisa, *et al.*, Department of Psychology, University of Alabama at Birmingham *Mental Retardation: A Symptom and a Syndrome*. Available at <http://www.uab.edu/cogdev/mentreta.htm> (last visited March 25, 2010).

² Immediately prior to adopting their current name, the organization was called the Association for Retarded Citizens of the United States. See *The Arc About Us*, available at <http://www.thearc.org/NetCommunity/Page.aspx?pid=403> (last visited March 25, 2010).

³ The Association for Retarded Citizens of Florida, Inc., adopted the fictitious name The Arc of Florida in 2006.

⁴ *The Arc Q&A*, available at www.thearc.org/NetCommunity/Document.Doc?&id=143 (last visited March 25, 2010).

⁵ 2010 Wash. Laws 94, effective June 10, 2010.

⁶ American Psychiatric Association, *DSM-V: The Future Manual*, available at <http://www.psych.org/MainMenu/Research/DSMIV/DSMV.aspx> (last visited March 25, 2010).

disability” in order to be consistent with current international practice.⁷ In addition, the APA proposes changing the diagnostic criteria associated with intellectual disability.⁸ The new criteria will be released in May 2013.⁹

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 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 current Chapter 393 (Developmental Disabilities) definition of “retardation,” which defines retardation as:

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.

The statutory definition of developmental disability indicates that it *is* attributable to mental retardation, among other conditions. Section 393.063, 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.

⁷ American Psychiatric Association, *DSM-5: Proposed Development Mental Retardation*, available at <http://www.dsm5.org/ProposedRevisions/Pages/proposedrevision.aspx?rid=384#> (last visited March 25, 2010).

⁸ *Id.*

⁹ American Psychiatric Association, *DSM-5: Timeline*, available at <http://www.dsm5.org/about/Pages/Timeline.aspx> (last visited March 25, 2010).

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.

A definition for the term “intellectual disability” does not currently appear in the Florida statutes although the term is defined in an Administrative Rule promulgated by the Department of Education. Rule 6A-6.03011(1), F.A.C. states:

An intellectual disability is defined as significantly below average general intellectual and adaptive functioning manifested during the developmental period, with significant delays in academic skills. Developmental period refers to birth to 18 years of age.

III. Effect of Proposed Changes:

The term “intellectual disability” replaces “mental retardation” in statutes pertaining to:

- The application of the Death Penalty;
- Persons disqualified or excused from jury service;
- Actions by executors, administrators, trustees, etc;
- Certain judicial or other proceedings involving victims or witnesses under the age of 16 or person with mental retardation; special protections;
- Screening for metabolic disorders, other hereditary and congenital disorders, and environmental risk factors;
- Developmental Disabilities;
- Mental Health;
- Intermediate Care Facilities for Developmentally Disabled Persons;
- Vocational Rehabilitation;
- Special Disability Trust Fund;
- Advertising and labeling of drugs, devices, and cosmetics; exemptions;
- Handicapped children; continuation of coverage;
- Health maintenance contracts;
- Plans for coverage of employees of political subdivisions;
- Capacity of principal; procedure;
- Permitting minors and persons under guardianship to gamble;
- Child abuse and sexual abuse of victims under age 16 or persons with mental retardation;
- Mentally Deficient and Mentally Ill Defendants;
- Prohibition on imposition of the death sentence upon a defendant with mental retardation;
- Extradition of persons alleged to be of unsound mind;
- Department of Corrections;
- Application for mental retardation services as condition of parole;
- Medical screening and treatment of child; examination of parent, guardian, or person requesting custody;
- Juvenile Justice; Interstate Compact on Juveniles;
- Health Facility and Services Development Act;

- Agency notification before release of mentally retarded inmates;
- Reimbursement of Medicaid providers’
- Rights of forensic clients; and
- Testimony of mentally-retarded victims in prosecution of sex offenses.

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

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

Because the APA has not finished its revisions to the DSM-5, formally adopting a modification to “mental retardation” in favor of “intellectual disability;” and because use of the term “intellectual disability” has not yet become universal, the bill includes legislative intent in order to avoid any potential confusion which might arise as the new term is applied:

- The changes made by the bill are not intended to expand or contract the scope of the Florida Statutes, and
- Nothing in the bill may be construed to change the application of any provision of the Florida Statutes to any person.

Specifically, in s. 393.063, F.S., the bill clarifies that as the new terminology is applied in the pretrial, trial, sentencing and death penalty areas of the criminal law, the new terminology has the same meaning and is interchangeable with the terms that are changed by the bill. The same clarification appears in s. 921.137, F.S., with regard to the imposition of the death penalty.

The effective date of the bill is July 1, 2010.

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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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 13, 2010:

Clarifies that as the new terminology is applied in the pretrial, trial, sentencing and death penalty areas of the criminal law, the new terminology has the same meaning and is interchangeable with the terms that are changed by the bill.

CS by Children, Families, and Elder Affairs on March 26, 2010:

The Committee Substitute reflects the revision of three additional statutes where the term “mental retardation” needed substitution, and includes legislative intent.

B. Amendments:

None.