

**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/SB 460

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Altman

SUBJECT: Intellectual Disabilities

DATE: February 15, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	<b>Fav/CS</b>
2.	Cellon	Cannon	CJ	<b>Favorable</b>
3.			BC	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                            |                                     |   |
|----------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE... | <input 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:**

This bill 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.

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

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. According to the American Association on Mental Retardation (AAMR), mental retardation is “a disability that occurs before age 18. It is characterized by significant limitations in intellectual functioning and adaptive behavior as expressed in conceptual, social and practical adaptive skills.”<sup>1</sup> Studies have shown that mental retardation affects around 1 to 3 percent of the population.<sup>2</sup>

Mental retardation has been defined and renamed many times. For example, in 1910, three levels of mental retardation were identified: idiot, imbecile, and moron.<sup>3</sup> Additionally, feeble-mindedness and mental deficiency were used as labels for mental retardation during the late 19th and early 20th century.<sup>4</sup> 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 functioning<sup>5</sup> in at least two of the following areas:

- Communication.
- Selfcare.
- Home living.
- Social or interpersonal skills.
- Use of community resources.
- Self-direction.
- Functional academic skills.
- Work.
- Leisure.
- Health.
- Safety.<sup>6</sup>

The Arc of the United States, an organization that advocates for and serves people with intellectual and developmental disabilities, changed its name in 1992<sup>7</sup> to reflect contemporary

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<sup>1</sup> The Arc, *Q&A* (revised Oct. 2004), [www.thearc.org/NetCommunity/Document.Doc?&id=143](http://www.thearc.org/NetCommunity/Document.Doc?&id=143) (last visited Feb. 1, 2012).

<sup>2</sup> *Id.*

<sup>3</sup> Fred J. Biasini, *et al.*, Dep’t 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 Feb. 1, 2012).

<sup>4</sup> *Id.*

<sup>5</sup> 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. DSM-5 Development, American Psychiatric Ass’n, *A 00 Intellectual Developmental Disorder, DSM-IV, Mental Retardation*, available at <http://www.dsm5.org/ProposedRevision/Pages/proposedrevision.aspx?rid=384#> (last visited Feb. 1, 2012).

<sup>6</sup> *Id.*

<sup>7</sup> 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*, <http://www.thearc.org/page.aspx?pid=2344> (last visited Feb. 1, 2012). 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*,

sensibilities. The Arc notes:

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.<sup>8</sup>

Other organizations in the United States, such as United Cerebral Palsy, take similar positions on use of this term.<sup>9</sup> Additionally, in 2010, the State of Washington enacted legislation amending its statutes to make the change to "intellectual disability."<sup>10</sup>

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.<sup>11</sup> The APA has proposed renaming "mental retardation" as "intellectual disability" in order to be consistent with current practice.<sup>12</sup> In addition, the APA proposes changing the diagnostic criteria associated with intellectual disability.<sup>13</sup> The new criteria will be released in May 2013.<sup>14</sup>

### **Current Statutory Definitions**

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

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[http://arcflorida.org/index.php?option=com\\_content&view=category&layout=blog&id=5&Itemid=2](http://arcflorida.org/index.php?option=com_content&view=category&layout=blog&id=5&Itemid=2) (last visited Feb. 1, 2012).

<sup>8</sup> The Arc, *supra* note 1.

<sup>9</sup> See United Cerebral Palsy, *Legislative Agenda for the 112th Congress*, <http://www.ucp.org/public-policy/legislative-agenda> (last visited Feb. 1, 2012); American Ass'n on Intellectual and Developmental Disabilities, *Definition of Intellectual Disability*, [http://www.aaid.org/content\\_100.cfm?navID=21](http://www.aaid.org/content_100.cfm?navID=21) (last visited Feb. 1, 2012).

<sup>10</sup> See Revised Code of Washington 44.04.280.

<sup>11</sup> See United Cerebral Palsy, *Legislative Agenda for the 112th Congress*, <http://www.ucp.org/public-policy/legislative-agenda> (last visited Feb. 1, 2012); American Ass'n on Intellectual and Developmental Disabilities, *Definition of Intellectual Disability*, [http://www.aaid.org/content\\_100.cfm?navID=21](http://www.aaid.org/content_100.cfm?navID=21) (last visited Feb. 1, 2012).

<sup>12</sup> DSM-5 Development, American Psychiatric Ass'n, *A 00 Intellectual Developmental Disorder, Proposed Revision*, <http://www.dsm5.org/ProposedRevision/Pages/proposedrevision.aspx?rid=384> (last visited Feb. 1, 2012).

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

<sup>14</sup> DSM-5 Development, American Psychiatric Ass'n, *Timeline*, <http://www.dsm5.org/about/Pages/Timeline.aspx> (last visited Feb. 1, 2012).

“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 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.<sup>15</sup>

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 in Rule 6A-6.03011(1) of the Florida Administrative Code. The Rule states:

An intellectual disability is defined as significantly below average general intellectual and adaptive functioning manifested during the developmental period,

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<sup>15</sup> Section 393.063(32), F.S.

with significant delays in academic skills. Developmental period refers to birth to 18 years of age.

### 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, 916.3012, 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.);
- 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.

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, the bill includes legislative intent in order to avoid any potential confusion which might arise as the new term is applied. 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.

Additionally, 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.”<sup>16</sup>

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 provides an effective date of July 1, 2012.

#### **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:**

According to the Department of Corrections (DOC or department), the bill will require revisions to be made to the department’s procedures, health services bulletins, and

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<sup>16</sup> See sections 9 and 38 of the bill.

Offender Based Information System codes because they reference the standardized professional terminology and diagnostic codes set forth in the DSM-IV.<sup>17</sup> The department did not provide an estimate for what these revisions may cost.

**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 Children, Families, and Elder Affairs on February 9, 2012:**

The committee substitute reinstates the words “prior to” (instead of “before”) to s. 440.49, F.S.

- B. **Amendments:**

None.

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

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<sup>17</sup> Tommy Maggitas, Dep’t of Corrections, *SB 460- Intellectual Disabilities* (Jan. 10, 2012) (on file with the Senate Committee on Children, Families, and Elder Affairs).