

Legislative Analysis



THE "R" WORD: REMOVE & REPLACE REFERENCES

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House Bill 5345 as enrolled
Public Act 64 of 2014
Sponsor: Rep. Matt Lori

House Bill 5346 as enrolled
Public Act 65 of 2014
Sponsor: Rep. Phil M. Cavanagh

House Bill 5347 as enrolled
Public Act 66 of 2014
Sponsor: Rep. Gail Haines

House Bill 5348 as enrolled
Public Act 67 of 2014
Sponsor: Rep. Tom Leonard

House Bill 5349 as enrolled
Public Act 68 of 2014
Sponsor: Rep. Kevin Cotter

House Bill 5350 as enrolled
Public Act 69 of 2014
Sponsor: Rep. Tom Cochran

House Bill 5351 as enrolled
Public Act 70 of 2014
Sponsor: Rep. David Knezek

House Bill 5352 as enrolled
Public Act 71 of 2014
Sponsor: Rep. Pat Somerville

House Committee: Health Policy
Senate Committee: Health Policy

Senate Bill 805 as enrolled
Public Act 72 of 2014
Sponsor: Sen. Rebekah Warren

Senate Bill 806 as enrolled
Public Act 73 of 2014
Sponsor: Sen. Bruce Caswell

Senate Bill 807 as enrolled
Public Act 74 of 2014
Sponsor: Sen. Jim Ananich

Senate Bill 808 as enrolled
Public Act 75 of 2014
Sponsor: Sen. Rick Jones

Senate Bill 809 as enrolled
Public Act 76 of 2014
Sponsor: Sen. Mark C. Jansen

Senate Bill 810 as enrolled
Public Act 77 of 2014
Sponsor: Sen. Bert Johnson

Senate Bill 811 as enrolled
Public Act 78 of 2014
Sponsor: Sen. John Moolenaar

Analysis of the bills as enacted (7-31-14)

BRIEF SUMMARY: The bills amended various acts to replace the terms "mental retardation" and "mentally retarded" with less stigmatizing terms.

FISCAL IMPACT: The bills would have no fiscal implications for state or local units of government.

THE APPARENT PROBLEM:

Originally, the use of the terms "mentally retarded" and "mental retardation" had a neutral and specific medical connotation. They replaced earlier technical terms such as "moron" and "idiot" that had become stigmatizing and used as insults. Unfortunately, the new terms and their variants have also become stigmatizing. When used inappropriately, the words become very hurtful and serve only to further isolate and discriminate against individuals with intellectual disabilities.

For more than a decade, the Special Olympics has worked to change the public perception of people with intellectual disabilities. One initiative, Project Unify, enables special education students to participate in team sports alongside general education students. In 2009, two college students interning with the Special Olympics launched a campaign on college campuses to stop using the "R-words" – retarded and retardation. The Spread the Word to End the Word initiative has since spread. In 2010, President Obama signed "Rosa's Law," which replaces "mentally retarded individual" and "mental retardation" with "individual with an intellectual disability" and "intellectual disability," respectively, in federal health, education, and labor laws. Rosa's Law also puts federal statutes in line with language in use by the Centers for Disease Control and Prevention (CDC) and United Nations. Recently, almost all of the states have amended their statutes to remove what is now referred to as the "R-word".

In December of 2013, the State of Michigan Mental Health and Wellness Commission (created by Executive Order 2013-6) issued a report detailing its findings and recommendations for improving "both the lives of and the outcomes for individual and families living with mental illnesses, developmental disabilities and substance use disorders" in the state. One of the issues studied was that of the negative effects of the "stigma" associated with mental illness and developmental disabilities, which encompass intellectual disabilities has on individuals, families, and communities. The Commission recommended elimination of the phrase "mental retardation" and its variants in state law and replacement with "developmental disability" and appropriate variations.

THE CONTENT OF THE BILLS:

The bills address a concern identified by the Michigan Mental Health and Wellness Commission—that of removing stigmatizing terminology from all state statutes.

As a package, the bills would delete the use of the terms "retarded," "mentally retarded," and "mental retardation" as follows:

House Bill 5345 amends the Michigan Penal Code (MCL 750.520a), which contains definitions for terms used in the criminal sexual conduct statutes, to strike references to the outdated terms contained in the definition of "developmental disability" and replace them with the terms *intellectual disability* or *intellectually disabled*. "Intellectual disability" would mean that term as defined in Section 100b of the Mental Health Code. [Note: Senate Bill 805 amends the Mental Health Code to replace the term "mental

retardation" in Section 100b with "intellectual disability"; the new term would have the same meaning as the one it replaces.]

House Bill 5346 amends the Child Care Organization Act (Public Act 116 of 1973, MCL 722.111) to replace the reference to "mentally retarded" within the definition for "child caring institution" with the term *developmentally disabled*.

House Bill 5347 amends the Public Health Code (333.20173a et al.) to replace the reference to an "intermediate care facility for people with mental retardation" with *other facility defined in 42 USC 1396(d)*, replace references to "mental retardation" or "mentally retarded" with *developmental disability* or *developmentally disabled*, and correct several federal law citations.

House Bill 5348 amends the Insurance Code (MCL 500.2264) to replace "mental retardation" with *developmental disability*.

House Bill 5349 amends the Revised Judicature Act (MCL 600.876) to replace "retarded" with *developmentally disabled*.

House Bill 5350 amends the Surrogate Parenting Act (MCL 722.853 et al.) to replace "mentally retarded" with *intellectually disabled* and define it to mean that term as defined in Section 100b of the Mental Health Code.

House Bill 5351 amends Public Act 31 of the First Extra Session of 1948 (MCL 123.952b), which authorizes an intermediate school district to incorporate an authority to acquire or operate a building as a facility for "retarded" children to instead refer to *developmentally disabled* children.

House Bill 5352 amends the Public School Employees Retirement Act (MCL 38.1306) to revise a reference to services purchased and performed in certain day care programs for the "severely mentally retarded" to instead apply to services performed for the *developmentally disabled*.

Senate Bill 805 amends the Mental Health Code (MCL 330.1100b et al.) to replace the term "mental retardation" in Section 100b with *intellectual disability*; the new term would have the same meaning as the one it replaces. The bill replaces references throughout the code to "mental retardation" with *intellectual disability* or *developmental disability*, as appropriate.

The bill also makes the following revisions:

- Revise the definition of "mental health professional" to apply to a registered professional nurse, licensed master's social worker, licensed professional counselor, and marriage and family therapist who is *otherwise authorized to engage in the practice of that profession* under the profession's specific title

within the Public Health Code, such as "Part 172" for a RPN, rather than referencing the entire article pertaining to health care occupations (Article 15).

- Replace references to "intermediate care facility for people with mental retardation" with "other facility defined in 42 USC 1396d (d)".

Senate Bill 806 amends the Adult Foster Care Facility Licensing Act (MCL 400.734b) to replace a reference to "intermediate care facility for people with mental retardation" contained in the definition of "mental health facility" with *other facility defined in 42 USC 1396d(d)*. The term would still include a psychiatric facility.

Senate Bill 807 amends the Prudent Purchaser Act (MCL 550.52) to replace a reference to a "mental retardation facility" contained within the definition of "health facility" to instead refer to *other facility defined in 42 USC 1396d(d)*.

Senate Bill 808 amends the Nonprofit Health Care Corporation Reform Act (MCL 550.1410) to replace a reference to mental retardation with the term *developmental disability*. The amended provision prohibits a certificate issued by Blue Cross Blue Shield from being terminated at a specific age with respect to an unmarried child who is incapable of self-sustaining employment by reason of mental retardation (now developmental disability) or physical disability if certain specified conditions are met.

Senate Bill 809 amends the Code of Criminal Procedure (MCL 768.20a) to revise provisions pertaining to an insanity defense to replace references to "mentally retarded" with *intellectually disabled* and to "being mentally retarded" with *having an intellectual disability*. The bill also replaces a reference to "mentally retarded" with *intellectually disabled* in a provision within the sentencing guidelines pertaining to surrogate contracts involving minors or (now) intellectually disabled.

Senate Bill 810 amends the Natural Resources and Environmental Protection Act (MCL 324.43515). The provision allows the Department of Natural Resources to issue a permit authorizing a mentally retarded person, or a resident of a licensed home for the aged, to fish without a license if the person is part of a group accompanied by one or more licensed adults. The bill replaces the term "mentally retarded" with *developmentally disabled individual*.

Senate Bill 811 amends the Older Michiganians Act (MCL 400.586) to replace a reference to "mentally retardation" with *developmentally disabled* in a provision pertaining to the duties of the Office of Services to the Aging in coordinating and developing foster grandparent and senior companion programs.

BACKGROUND INFORMATION:

For a copy of the 35-page 2013 report entitled "Improving Quality of Life by Supporting Independence and Self-determination" issued by the State of Michigan Mental Health and Wellness Commission Report, see:

ARGUMENTS:

For:

Proponents of the bills say that, like the terms they once replaced, "mental retardation," "mentally retarded," and the slang "retard" have all too often been used as insults and slurs directed at the intellectually disabled and general populations alike. However, even when directed at a person without disabilities, such use serves only to demean, degrade, dehumanize, and isolate the developmentally disabled community. In recent years, there has been a push by families, friends, individuals with disabilities, and advocacy groups, including the Michigan Developmental Disabilities Council, to remove what is now considered hateful speech from state laws and replace it with "people-first" and inclusive language. Proponents say it is time for Michigan to join other states in saying No to the R-word.

Response:

According to news accounts, some opponents of the Spread the Word to End the Word campaign believe that the initiative is misguided and will do little to change the hurtful treatment directed at the intellectually disabled. The problem, they say, is that even the new terms carry with them a "subconscious cultural taboo" and some already report derogatory uses of "ID". Even if using new terms is a step forward, some say it is more important to work towards cultural shifts that will result in more inclusivity and acceptance, such as Project Unify by the Special Olympics in partnership with the US Department of Education. That project aims to increase sensitivity and awareness among teens by mixing special education students with general population students in team sports.

Further, some advocates for the developmentally disabled say it would be preferable to focus resources on the known *causes* of intellectual disabilities, such as *in utero* exposure to toxins such as mercury and lead, certain diseases such as measles, and the use of alcohol and/or drugs harmful to the developing fetus. Indeed, fetal alcohol syndrome is a leading cause of intellectual disability, as are post-birth exposure post-birth to lead and mercury and malnutrition.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.