



General Statutes Commission

300 N. Salisbury Street, Suite 401
Raleigh, NC 27603-5925
Tel. 919-733-6660 Fax 919-715-5459

Floyd M. Lewis
Revisor of Statutes

P. Bly Hall
Assistant Revisor of Statutes

MEMORANDUM

To: Senate Rules and Operations of the Senate
From: General Statutes Commission
Re: SB 768 (People First Language 2018)
Date: June 6, 2018

General Comments

People First drafting refers to a person with a disability as a person first, does not equate a person with the person's disability, and seeks to avoid derogatory language when describing a person's disability. This bill changes "mental retardation" to "intellectual disability" and "the mentally retarded" to "individuals with an intellectual disability" and makes similar changes in certain sections of the General Statutes.¹ This bill also makes other People First drafting changes and technical amendments in the affected sections.

The technical amendments consist of (i) stylistic updates, (ii) replacing legalese with plain English, (iii) rephrasing unclear language, (iv) making language gender neutral, (v) modernizing the format of definitions and other lists, (vi) correcting the format of citations, (vii) making conforming changes, (viii) correcting a typographical error, and (ix) providing consistency to a list by making every item in the list singular.

Background

Advocates for people with disabilities across the nation have been recommending the use of People First language for decades. In S.L. 2009-264, the General Assembly directed the General Statutes Commission to study this issue and recommend any People First drafting changes; the Commission recommended such a bill, which was enacted as S.L. 2011-29. In 2010, the U.S. Congress enacted a law to replace "mental retardation" with "intellectual disability" or "intellectual disabilities" in the U.S. Code. Rosa's Law, Pub. L. No. 111-256. Later, in 2013, the American Psychiatric Association published the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, (DSM-5), which also replaced "mental retardation" with "intellectual disability."

Specific Comments

Section 1 of the bill amends statutes relating to guardianship by (i) replacing "mentally ill or mentally retarded ward" and a nearly identical term with "ward with a mental illness or intellectual disability" wherever the terms appear in G.S. 1-301.2, 35A-1241, 35A-1245, and the catchline of G.S. 90-275, (ii) replacing "mental retardation" with "intellectual disability" and modernizing the format of definitions in G.S. 35A-1101 and G.S. 35A-1202, (iii) deleting the archaic term "lunacy" from the definition of "mental illness" in G.S. 35A-1101, and (iv) making technical amendments in most of these statutes.

¹ The General Statutes Commission plans to recommend for introduction in 2019 another bill to amend the remaining sections that use the term "mental retardation" or "mentally retarded."

Section 2 replaces "mental retardation" with "intellectual disability" and makes technical amendments in G.S. 7B-1111.

Section 3 does the following: (i) replaces "witnesses with developmental disabilities or mental retardation" with "witnesses with an intellectual or developmental disability" in the catchlines of G.S. 8C-1, Rule 616, and G.S. 15A-1225.2 and (ii) replaces "person with a developmental disability or a person with mental retardation" with "individual with an intellectual or developmental disability" and makes technical amendments in the text of G.S. 8C-1, Rule 616, and G.S. 15A-1225.2.

Section 4 does the following: (i) changes "mental retardation" to "intellectual disability" in G.S. 14-27.20 and G.S. 14-32.1, (ii) changes the definitional term "mentally disabled" to "person who has a mental disability" in G.S. 14-27.20 and makes conforming changes in G.S. 14-27.22, 14-27.27, 14-27.33, 14-205.1, 14-205.2, 14-205.3, 14-208.6, 15-144.1, 15-144.2, 15A-290, and 115C-270.35, including changing "severely or profoundly mentally disabled" to "has a severe or profound mental disability" in some of these statutes, (iii) changes "handicapped person" and "handicapped persons" to "individual with a disability" and "individuals with a disability" in G.S. 14-32.1 and makes conforming changes in G.S. 15A-266.3A and G.S. 15A-266.4, (iv) modernizes the format of definitions in G.S. 14-27.20 and G.S. 14-208.6, (v) adds a missing subsection catchline in G.S. 115C-270.35(a), and (vi) makes technical amendments in most of these statutes.

Section 5 replaces "mental retardation" with "intellectual disability" and makes technical amendments in G.S. 15A-2000.

Section 6 replaces "mental retardation" with "developmental disabilities" in G.S. 58-32-10, 62-289.3, 143B-152.14, and 153A-247, which are statutes that refer to "mental health, mental retardation, and substance abuse" authorities or programs. This replacement conforms to the name change of these authorities and programs by Chapter 625 of the 1989 Session Laws. This section also modernizes the format of definitions in G.S. 62-289.3 and makes technical amendments in most of these statutes.

Section 7 does the following: (i) replaces "mentally retarded or physically handicapped children" and a nearly identical term with "children with an intellectual or physical disability" wherever the terms appear in the catchlines of G.S. 58-51-25 and G.S. 58-51-35, shortens the catchline of G.S. 58-51-25, and makes conforming changes in the text of G.S. 58-65-2 and G.S. 58-67-171, (ii) replaces "mental retardation or physical handicap" and "physical handicap or mental retardation" with "intellectual or physical disability" in G.S. 58-51-25 and G.S. 58-51-35, (iii) replaces "mental retardation" with "intellectual disability" in G.S. 58-51-40, (iv) amends G.S. 58-65-65 by deleting as superfluous a reference to the Commissioner of Insurance, deleting as obsolete two applicability phrases, deleting as unnecessary a list of items illustrating "charges made for medical care" that includes a reference to "charges for medical care of . . . mental retardation," and shortening the phrase "[t]he restrictions and requirements of this section" to "[t]his section," and (v) makes technical amendments in all these statutes.

Section 8 replaces "child . . . who is mentally ill or mentally retarded" with "child . . . who has a mental illness or intellectual disability" and makes technical amendments in G.S. 110-20.1.

Section 9 replaces "mental retardation" with "intellectual disability," replaces "children who are not disabled" with "children who do not have disabilities," modernizes the format of definitions, and makes other technical amendments in G.S. 115C-106.3.

Section 10 replaces "the sick, mentally ill or mentally retarded" with "individuals with a sickness, mental illness, or intellectual disability" in G.S. 130A-399, updates the name of "The Arc of North Carolina, Inc." in G.S. 130A-415, and makes technical amendments in both statutes.

Section 11 amends G.S. 143-282 by replacing the sentence "It shall make a similar study of the problem of the care of the feebleminded, with especial attention to the custodial care of intellectually handicapped persons not teachable or trainable" with "It shall make a similar study of the problem of the care of individuals with an intellectual disability, with special attention to those requiring custodial care." This section further amends G.S. 143-282 by replacing "the physically handicapped" with "individuals with a physical disability," replacing "physical handicap" with "physical disability," and making technical amendments.

Section 12 amends G.S. 159-40 by replacing "mentally retarded and developmentally disabled" with "individuals with an intellectual or developmental disability," tabulating a list in subsection (d), and making technical amendments.

Section 13 replaces "mental retardation" with "intellectual disability," modernizes the format of definitions, and updates the use of commas in G.S. 168-21.

Section 14 replaces "mental retardation" with "intellectual disabilities," modernizes the format of definitions, and makes other technical amendments in G.S. 168A-3. The Senate Judiciary Committee adopted an amendment proposed on behalf of the General Statutes Commission that clarifies part of the definition of "physical or mental impairment" in sub-subdivision (7a)a.2. by tracking comparable language in a federal regulation adopted under the Americans with Disabilities Act (28 C.F.R. § 36.105(b)(1)(ii)). This language was offered for consideration by the Department of Health and Human Services.

Section 15 provides that this act does not affect the coverage, eligibility, rights, responsibilities, or provision of State or federal services or benefits for individuals who have been diagnosed with mental retardation and whose diagnosis has not been changed to a diagnosis of intellectual disability.

Section 16 provides effective date and applicability provisions for the bill.