



# Ohio Legislative Service Commission

## Bill Analysis

Matthew Magner

### Sub. H.B. 158

131st General Assembly

(As Reported by S. State & Local Government)

**Reps.** Dever and Howse, Amstutz, Anielski, Antonio, Bishoff, Boyd, Brown, Butler, Conditt, Derickson, DeVitis, Dovilla, Ginter, Hambley, Hayes, Huffman, Lepore-Hagan, Maag, McClain, Patmon, Patterson, Phillips, Ramos, Reineke, Retherford, Romanchuk, Ryan, Schuring, Sears, Slesnick, Sweeney, Sykes, Zeltwanger, Gonzales, Barnes, T. Johnson, Kuhns, LaTourette, Antani, Ashford, Baker, Blessing, Boyce, Brenner, Burkley, Celebrezze, Cera, Clyde, Craig, Cupp, Driehaus, Grossman, Hackett, Hagan, Hall, Henne, Hill, G. Johnson, Koehler, Kunze, Landis, Leland, Manning, McColley, M. O'Brien, S. O'Brien, Pelanda, Perales, Reece, Rezabek, Rogers, Ruhl, Schaffer, Sheehy, Slaby, K. Smith, R. Smith, Sprague, Strahorn, Terhar

**Sens.** Uecker, Hackett, Jones, LaRose

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## BILL SUMMARY

- Replaces references in the Revised Code to the term "mental retardation" and its derivations with the term "intellectual disability."
- Specifies that "intellectual disability" is included within the meaning of the term "developmental disability."
- Modifies the standards used in determining whether a person has a moderate level of intellectual disability and could be subject to institutionalization by court order.
- Repeals an exception to the laws governing the confidentiality of certain records related to institutions for persons with intellectual disabilities.

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## CONTENT AND OPERATION

### Statutory terms regarding mental retardation

Throughout the Revised Code, the bill removes the terms "mentally retarded" and "mental retardation" and replaces them with the term "intellectual disability." The

bill specifies that it is the intent of the General Assembly to make these changes without a resulting change in meaning.<sup>1</sup>

To replace "mental retardation" with "intellectual disability," the bill makes a number of changes. The bill defines "intellectual disability" in place of "mentally retarded person" in the primary definition sections related to the Ohio Department of Developmental Disabilities and county boards of developmental disabilities<sup>2</sup> and making corresponding changes throughout those chapters. Elsewhere throughout the Revised Code, where "mental retardation" is used by itself, the bill changes the term to "intellectual disability." Where "mental retardation" and "developmental disability" are used together in a statute, the bill changes the references to both terms to the single term "developmental disability."

The bill specifies that whenever "mental retardation" or any derivation of that term is referred to or designated in any statute, rule, contract, grant, or other document, the reference or designation is deemed to have the same meaning established by or derived from the bill's definition of "intellectual disability." This provision replaces a similar provision that currently is included in a statute dealing with criminal offenders who may receive intervention in lieu of conviction.<sup>3</sup>

### **Inclusion of "intellectual disability" within "developmental disability"**

The bill specifies that the term "developmental disability" includes an "intellectual disability."<sup>4</sup> Under current law, "developmental disability" means a severe, chronic disability that is characterized by all of the following: (1) it is attributable to a mental or physical impairment or a combination of mental and physical impairments, other than a mental or physical impairment solely caused by mental illness, (2) it is manifested before age 22, (3) it is likely to continue indefinitely, (4) based on the person's age, it results in or involves developmental delays or substantial functional limitations, and (5) it causes the person to need a combination and sequence of special, interdisciplinary, or other type of care, treatment, or provision of services for an extended period of time that is individually planned and coordinated.

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<sup>1</sup> Section 4.

<sup>2</sup> R.C. 5123.01 and 5126.01.

<sup>3</sup> R.C. 2951.041 and 5123.014.

<sup>4</sup> R.C. 5123.01 and 5126.01.



## Determination of a moderate level of intellectual disability

The bill modifies the standards used in determining whether a person has a moderate level of intellectual disability and could be subject to institutionalization by court order. Under current law, the determination is based on standard measurements recorded in the *Manual of Terminology and Classification in Mental Retardation*. Under the bill, the determination is to be based on a finding that a person has (1) at least moderate deficits in overall functioning, as indicated by a full-scale intelligence quotient test score of 55 or below, and (2) at least moderate deficits in adaptive behavior, as determined in accordance with the criteria established in the fifth edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*.<sup>5</sup>

The bill specifies that whenever "mentally retarded person subject to institutionalization by court order" or any derivation of that term is referred to or designated in any statute, rule, contract, grant, or other document, the reference or designation is deemed to have the same meaning established by or derived from the bill's definition of "person with an intellectual disability subject to institutionalization by court order," including the definition of "moderate level of intellectual disability."<sup>6</sup>

## Disclosure of records

The bill repeals an exception to a provision of law establishing that certain records that identify a resident or former resident of an institution for persons with intellectual disabilities or a person whose institutionalization is sought must be kept confidential and may not be disclosed by any person. Under the exception repealed by the bill, the records could be disclosed if, in the judgement of the managing officer for institution records, disclosure to a mental health facility is in the best interest of the person identified in the records.<sup>7</sup> The bill maintains exceptions that permit disclosure if (1) in the judgment of the court (for judicial records) and the managing officer (for institution records), disclosure is in the best interest of the person identified and that person or that person's guardian (or parent or guardian if that person is a minor) consents or (2) disclosure is necessary for treatment or payment purposes.

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<sup>5</sup> R.C. 5123.01(P).

<sup>6</sup> R.C. 5123.014.

<sup>7</sup> R.C. 5123.89(B)(3).



## Background

### Federal law

In October 2010, Congress passed Rosa's Law, which changed references to "a mentally retarded individual" in specified federal laws to "an individual with an intellectual disability," and references to "mental retardation" to "intellectual disability."<sup>8</sup> Rosa's Law also required federal agencies that administer the affected laws to make conforming amendments to their regulations. Other federal agencies, though not required to do so by Rosa's Law, have revised their regulations to use the term "intellectual disability." For example, the federal Social Security Administration adopted a final rule replacing the term "mental retardation" with "intellectual disability" for purposes of its "Listing of Impairments" used to evaluate claims involving mental disorders in adults and children.<sup>9</sup>

### Ohio law

Enacted in 2009 by the 128th General Assembly, Sub. S.B. 79 changed the name of the Ohio Department of Mental Retardation and Developmental Disabilities to the Ohio Department of Developmental Disabilities. The act also changed the name of county boards of mental retardation and developmental disabilities to county boards of developmental disabilities. It did not change other references to mental retardation in the Revised Code.

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## HISTORY

ACTION	DATE
Introduced	04-15-15
Reported, H. Health & Aging	12-09-15
Passed House (97-0)	01-26-16
Reported, S. State & Local Gov't	05-17-16

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<sup>8</sup> Public Law 111-256.

<sup>9</sup> See 78 Fed. Reg. 148 (2013).

