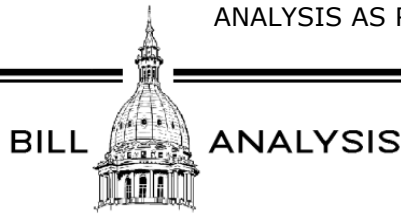




Senate Fiscal Agency
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Senate Bills 805 and 806 (as reported without amendment) (as enacted)
Senate Bill 807 (Substitute S-1 as reported)
Senate Bills 808 through 811 (as reported without amendment)
Sponsor: Senator Rebekah Warren (S.B. 805)
Senator Bruce Caswell (S.B. 806)
Senator Jim Ananich (S.B. 807)
Senator Rick Jones (S.B. 808)
Senator Mark C. Jansen (S.B. 809)
Senator Bert Johnson (S.B. 810)
Senator John Moolenaar (S.B. 811)
Committee: Health Policy

Date Completed: 3-3-14

RATIONALE

In 2013, Governor Rick Snyder issued an Executive Order creating the Mental Health and Wellness Commission to make recommendations for improving mental health in Michigan. In its final report, issued in December 2013, the Commission highlighted the serious negative impact of stigma associated with mental illness and noted that language, particularly phrases such as "mental retardation" and "mentally retarded", perpetuates stigma. Originally, these phrases were medical terms with a specific clinical connotation. Over time, however, they came to be used more commonly as insults against people with disabilities and as general pejorative descriptors. Michigan laws written many years ago still contain these phrases in a number of places; thus, the Commission included in its recommendations for eradicating stigma that the phrases be deleted and replaced with other terms, such as "intellectual disability" and "developmentally disabled", which are now considered to be more respectful.

CONTENT

The bills would amend a number of statutes to refer to "intellectual disability" and "developmentally disabled" rather than "mental retardation" and "mentally retarded", respectively.

Senate Bill 805 would amend the Mental Health Code. Senate Bill 806 would amend the Adult Foster Care Facility Licensing Act. Senate Bill 807 (S-1) would amend the Prudent Purchaser Act. Senate Bill 808 would amend the Nonprofit Health Care Corporation Reform Act. Senate Bill 809 would amend the Code of Criminal Procedure. Senate Bill 810 would amend the Natural Resources and Environmental Protection Act. Senate Bill 811 would amend the Older Michiganians Act.

Senate Bill 805

The Mental Health Code defines "mental retardation" as a condition manifesting before the age of 18 years that is characterized by significantly subaverage intellectual functioning and related limitations in at least two adaptive skills and that is diagnosed based on the following assumptions:

- Valid assessment considers cultural and linguistic diversity, as well as differences in communication and behavior factors.

- The existence of limitation in adaptive skills occurs within the context of community environments typical of the individual's age peers and is indexed to the individual's particular needs for support.
- Specific adaptive skill limitations often coexist with strengths in other adaptive skills or other personal capabilities.
- With appropriate supports over a sustained period, the life functioning of the individual with mental retardation will generally improve.

Under the bill, this definition would apply to the term "intellectual disability", rather than "mental retardation", and the reference to "mental retardation" would be replaced with "intellectual disability".

The Code requires a psychiatric facility or intermediate care facility for people with mental retardation to conduct criminal history checks and prohibits the facility from employing, independently contracting with, or granting clinical privileges to applicants with certain criminal convictions on their records. In all of these provisions, the bill would eliminate the reference to "intermediate care facility for people with mental retardation", and refer instead to a "facility defined in 42 USC 1396d(d)" (which defines "intermediate care facility for people with mental retardation").

The Code contains criteria for the admission of individuals with mental retardation and individuals with developmental disabilities other than mental retardation. The bill would refer to intellectual disabilities rather than mental retardation in these provisions. In several provisions that apply to mentally retarded and other developmentally disabled people, the bill would eliminate the reference to "mentally retarded". The bill also would delete the definition of "mentally retarded", which means significantly subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior.

A number of the Code's provisions regarding the mental health program of the Department of Corrections refer to prisoners who are mentally retarded. Instead, the bill would refer to prisoners who are developmentally disabled.

Senate Bill 806

The Adult Foster Care Facility Licensing Act defines "mental health facility" as a psychiatric or intermediate care facility for people with mental retardation under the Mental Health Code. The bill would refer to a facility defined in 42 USC 1396d(d), rather than an intermediate care facility for people with mental retardation.

Senate Bill 807 (S-1)

Under the Prudent Purchaser Act, "health facility" includes a mental hospital, psychiatric hospital, psychiatric unit, or mental retardation facility operated by the Department of Community Health or certified or licensed under the Mental Health Code. The bill would refer to a facility defined in 42 USC 1396d(d), rather than a mental retardation facility.

Senate Bill 808

The Nonprofit Health Care Corporation Reform Act prohibits a certificate issued by Blue Cross Blue Shield of Michigan (BCBSM) that provides for the termination of coverage of a subscriber's dependent at a specified age from terminating with respect to an unmarried child who is incapable of self-sustaining employment by reason of mental retardation or physical disability, if the following conditions are met:

- The child became incapable before age 19 and is chiefly dependent upon the subscriber for support and maintenance.
- Before the child turns 19, or within 31 days after that, the subscriber has submitted proof of the dependent's incapacity to BCBSM.

The bill would refer to developmental disability, rather than mental retardation, in this prohibition.

Senate Bill 809

The Code of Criminal Procedure contains provisions related to the use of insanity as a defense to a felony, including procedures for a psychiatric examination and evaluation of a defendant who opts to use such a defense. A report required after an evaluation must contain an opinion as to whether the defendant was mentally ill or mentally retarded at the time the alleged defense was committed. The bill would refer to intellectually disabled, rather than mentally retarded.

The Code also provides that it is an affirmative defense to a prosecution that the defendant was legally insane when he or she committed the acts constituting the offense. An individual is legally insane if, as a result of mental illness or as a result of being mentally retarded, the person lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law. Mental illness or being mentally retarded does not otherwise constitute a defense of legal insanity. In these provisions, the bill would refer to "having an intellectual disability", rather than "being mentally retarded".

The bill also would revise the sentencing guidelines to refer to "intellectually disabled" rather than "mentally retarded" in a provision regarding the arrangement of an illegal surrogate parent contract.

Senate Bill 810

Under the Natural Resources and Environmental Protection Act, the Department of Natural Resources may issue a permit authorizing a mentally retarded person to fish without a license if the person is a member of a group accompanied by one or more licensed adults. The bill would refer to a developmentally disabled individual, rather than a mentally retarded person.

Senate Bill 811

The bill would amend the Older Michiganians Act to refer to developmentally disabled persons, rather than mentally retarded persons, in a provision regarding the duties of the Office of Services to the Aging in coordinating and developing foster grandparent and senior companion programs.

MCL 330.1100b et al. (S.B. 805)
400.734b (S.B. 806)
550.52 (S.B. 807)
550.1410 (S.B. 808)
768.20a et al. (S.B. 809)
324.43515 (S.B. 810)
400.586 (S.B. 811)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

People with intellectual disabilities can suffer from the impact of stigma in school, the workplace, and social settings. Reportedly, more than 60% of students with intellectual disabilities experience bullying, often through the use of words such as "retarded" and its variations. Although these terms were once used by the medical establishment, today they serve only to degrade and alienate people with disabilities. Moreover, casual use of these words to denigrate things or people without disabilities also contributes to the conflation of disability with stupidity and other negative traits. This perpetuates stereotypes about and furthers the devaluation of

people with intellectual disabilities. These phrases have an effect similar to that of a racial or ethnic slur; they constitute hateful speech and should have no place in common discourse or statute. As of 2013, Michigan was one of only five states that had not made these language changes or introduced legislation to do so, according to the Michigan Developmental Disabilities Council. By replacing these hurtful terms in State law, the bills would promote a culture of inclusion, respect, and dignity for everyone in Michigan.

Legislative Analyst: Julie Cassidy

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Ellyn Ackerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.