

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
Third Reader

House Bill 822  
Judiciary

(Delegate Atterbeary, *et al.*)

Judicial Proceedings

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**Criminal Law - Altering References From Mentally Defective to Substantially Cognitively Impaired Individual**

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This bill alters references to the term “mentally defective” individual to “substantially cognitively impaired” individual in provisions of law concerning second-degree rape, second-degree sexual offense, third-degree sexual offense, and the licensing of individuals to engage in business as an explosives manufacturer or dealer or to possess explosives for certain purposes.

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**Fiscal Summary**

**State Effect:** The bill’s requirements can be handled with existing budgeted resources.

**Local Effect:** The bill’s requirements can be handled with existing budgeted resources.

**Small Business Effect:** None.

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**Analysis**

**Bill Summary/Current Law:** Section 3-301 of the Criminal Law Article defines a “mentally defective individual” as an individual who suffers from mental retardation or a mental disorder, either of which temporarily or permanently renders the individual substantially incapable of:

- appraising the nature of the of the individual’s conduct;
- resisting vaginal intercourse, a sexual act, or sexual contact; or

- communicating unwillingness to submit to vaginal intercourse, a sexual act, or sexual contact.

Except for substituting “an intellectual disability” for “mental retardation,” the bill’s definition of “substantially cognitively impaired individual” is identical to the current definition of “mentally defective individual.”

*Second-degree Rape, Second-degree Sexual Offense, and Third-degree Sexual Offense:* Among other things, these statutes prohibit a person from engaging in vaginal intercourse (second-degree rape), a sexual act (second-degree sexual offense), or sexual contact (third-degree sexual offense) with another if the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual and the person performing the act knows or reasonably should know that the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual.

*Licenses to Manufacture, Deal, or Possess Explosives:* One of the grounds for which the State Fire Marshal must deny an application for an explosives license or permit is if the applicant, or an officer, agent, or an employee of the applicant who will be handling explosives, has been adjudicated mentally defective as defined in § 3-301 of the Criminal Law Article.

**Background:** Chapter 119 of 2009 replaced the term “mental retardation” with “intellectual disability” in several articles of the State code. However, Chapter 119 did not alter provisions in the Criminal Law or Public Safety Articles.

**State Fiscal Effect:** The bill’s requirements can be met with existing State resources. This estimate assumes that any printing costs associated with the bill can be incorporated into standard annual printing orders for affected agencies. Given the provisions of law affected by the bill, it is unlikely that significant printing costs are incurred or that any official signage needs to be replaced.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Health and Mental Hygiene, Department of Legislative Services

**Fiscal Note History:** First Reader - February 24, 2016  
min/kdm

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