

Department of Legislative Services  
Maryland General Assembly  
2010 Session

FISCAL AND POLICY NOTE

House Bill 1324 (Delegate Schuh)  
Health and Government Operations

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Public General Laws - Terminology - Substitution for "Mentally Defective"

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The bill repeals the term “mentally defective individual” from statute and substitutes the term “individual with a cognitive disability, intellectual disability, or mental illness.”

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Fiscal Summary

**State Effect:** The bill’s change is primarily technical in nature and does not directly affect governmental finances or operations.

**Local Effect:** None.

**Small Business Effect:** None.

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Analysis

**Current Law/Background:** The term “mentally defective individual” is used in the Correctional Services, Criminal Law, Family Law, and Public Safety Articles to reference, respectfully, the types of institutions in which inmates are confined; victims of specified crimes; the types of institutions caring for children in an interstate placement; and an individual applying for a license to manufacture, deal, or possess explosives.

Chapter 119 of 2009 replaced the term “mental retardation” with “intellectual disability” in certain articles of the State code. The change in terminology effectively renamed State facilities and residential centers that include the term “mentally retarded” or “mental retardation.”

References to “mental retardation” were retained in the Criminal Law Article so there would be no unintentional impact on defendants who use mental retardation as a defense in a criminal case. Under Maryland law, a defendant is not criminally responsible for criminal conduct if, at the time of that conduct, the defendant, because of a mental disorder or mental retardation, lacks substantial capacity to appreciate the criminality of that conduct or to conform that conduct to the requirements of law. The law further clarifies that a mental disorder does not mean an abnormality manifested only by repeated criminal behavior or other antisocial misconduct.

The references changed by the bill to a “mentally defective individual” within the Criminal Law Article establish the severity of sexual offense against a victim in the case of rape or sexual assault. (One of the references also modifies “mental retardation” as it relates to a victim; however, that reference is changed to be an individual with a “developmental disability” rather than one with an “intellectual disability” as under Chapter 119 of 2009.) Therefore, the bill’s changes do not affect references to “mental retardation” as a method of criminal defense.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland State Department of Education, Department of Health and Mental Hygiene, Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Department of Legislative Services

**Fiscal Note History:** First Reader - March 15, 2010  
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