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TO: The Honorable William C. Smith, Jr.
Chair, Judicial Proceedings Committee

FROM: Jer Welter
Division Chief, Criminal Appeals Division, Office of the Attorney General

RE: HB 432 – Courts and Judicial Proceedings and Criminal Procedure –
Technical Corrections – References to Intellectual Disability – **Favorable
with Sponsor Amendment**

The Office of the Attorney General urges the Judicial Proceedings Committee to issue a favorable with amendments report on House Bill 432. Delegate Kaufman's bill replaces references to "mental retardation" with "intellectual disability," and replaces references to "insanity" with "mental disorder or an intellectual disability," in the Criminal Procedure Article and the Courts and Judicial Proceedings Article. We urge the Committee to give a favorable report to the bill along with a sponsor amendment offered by Delegate Kaufman, discussed below, which would correct an additional reference to "retardation" in the State Government Article.

The terms "retardation" and "insanity" are outdated. "Mental retardation" is now widely understood to be a slur against people with intellectual disabilities that should be avoided. The term "insanity" is no longer used in medical nomenclature. Yet these phrases are used in the Code to refer to criminal defendants who assert that they are incompetent to stand trial, as well as those who plead not criminally responsible. Md. Code Ann., Crim. Pro. §§ 3-106(b), 3-109(a), 3-310. The continued existence of these two phrases in multiple statutes in the Code demeans the dignity of those to whom they are directed.

Notably, on two previous occasions, the General Assembly has substituted “intellectual disability” for “mental retardation” in other portions of the Code. In 2009, with the passage of “Rosa’s Law,” 2009 Md. Laws ch. 119, the legislature replaced “mental retardation” with “intellectual disability” in various portions of the Code, including all of the Health–General Article. According to the Fiscal and Policy Note for Rosa’s Law, it was meant to replace “the term ‘mental retardation’ with ‘intellectual disability’ in the State code.” Maryland Fiscal Note, 2009 Sess. H.B. 20. A federal law of the same name eliminated references to “retardation” in the U.S. Code. Rosa’s Law, Pub. L. No. 111-256, 124 Stat. 2643 (2010).

Notwithstanding the passage of Rosa’s Law in Maryland, some references to “mental retardation” remained. In an effort to rectify that omission, in 2016, a reference to “mental retardation” was replaced with “intellectual disability” in Title 3 of Criminal Law Article. 2016 Md. Laws ch. 633.

Unfortunately, neither Rosa’s Law nor the 2016 legislation addressed certain remaining areas in which the Code still refers to “mental retardation” or “retardation”: the statutes in the Criminal Procedure Article relating to competency to stand trial and criminal responsibility; the Juvenile Causes Subtitle of the Courts & Judicial Proceedings Article; and in a single instance in the State Government Article. Substituting the term “intellectual disability” for these remaining references to “retardation” will align those portions of the Code with the remainder.

House Bill 432 has been passed by the House unanimously. It also conforms with identical provisions of the Annual Corrective Bill (SB 1106), which the Senate has likewise passed unanimously.¹

The sponsor amendment addresses the use of the word “retardation” in a lone additional, but important, location in the State Government Article: in the definition of “disability” that applies to the Maryland Fair Employment Practices Act’s prohibition of employment discrimination on the basis of disability (§ 20-601(b) of the State Government Article). The amendment replaces the word “retardation” with “intellectual disability” in that section of the Code as well.²

The definitions at issue retain the same substantive meanings as the prior terms, and Section 2 of the bill includes uncodified language making clear that no substantive change is intended. Thus, the existing case law using the prior terminology will still apply.

The bill ensures that individuals are referred to in a dignified manner, consistent with modern sensibilities. For the foregoing reasons, the Office of the Attorney General urges the Committee to issue a favorable with amendment report on House Bill 432.

¹ The pertinent provisions are on pages 10–12 and 13–18 of Senate Bill 1106.

² The fact that the State Government Article provision uses the term “retardation,” while the other provisions at issue use the term “mental retardation,” may explain why the State Government Article provision was not addressed in the bill as originally introduced.