

CANDACE McLAREN LANHAM
Chief Deputy Attorney General



CHRISTIAN E. BARRERA
Chief Operating Officer

CAROLYN A. QUATTROCKI
Deputy Attorney General

ZENITA WICKHAM HURLEY
Chief, Equity, Policy, and Engagement

ANTHONY G. BROWN
Attorney General

LEONARD HOWIE
Deputy Attorney General

PETER V. BERNS
General Counsel

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.
(410) 576-7036

WRITER'S DIRECT DIAL NO
(410) 576-6430

February 7, 2024

TO: The Honorable Luke Clippinger
Chair, Judiciary Committee

FROM: Karinna M. Rossi
Assistant Attorney General, Office of the Attorney General

RE: House Bill 432 - Courts and Judicial Proceedings and Criminal Procedure -
Technical Corrections - References to Intellectual Disability - **Support**

The Office of the Attorney General urges the Judiciary Committee to issue a favorable report on House Bill 432 – Courts and Judicial Proceedings and Criminal Procedure – Technical Corrections – References to Intellectual Disability. House Bill 432 replaces references to “mental retardation” with “intellectual disability” and “insanity” with “mental disorder or an intellectual disability” in the Criminal Procedure Article and the Courts and Judicial Proceedings Article.

These terms are outdated.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 legislature 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 two areas in which the code still refers to “mental retardation”: the statutes in the Criminal Procedure Article relating to competency to stand trial and criminal responsibility; and the Juvenile Causes Subtitle of the Courts & Judicial Proceedings Article. Substituting the remaining references to “mental retardation” in the Criminal Procedure Article and the Courts and Judicial Proceedings Article with “intellectual disability” will align those portions of the code with the remainder.

The definitions at issue remain substantively identical as the prior terms, and the uncodified section provides that no substantive change is intended. Thus, the existing case law using the prior terminology still applies.

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 report on House Bill 432.