



LOUISIANA STATE LAW INSTITUTE

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June 7, 2013

Representative Chuck Kleckley
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804-9062

Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: HCR NO. 88 of 2011

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature in response to 2011 House Current Resolution No. 88, relative to terminology referring to persons with disabilities.

Sincerely,

A handwritten signature in cursive script that reads "William E. Crawford".

William E. Crawford
Director

WEC/lr

Enclosure

cc: Representative Walt Leger, III
Representative Joseph P. Lopinto, III
Senator Mack "Bodi" White

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LOUISIANA STATE LAW INSTITUTE

**Report to the Louisiana Legislature
In Response to HCR 88 of the 2011 Regular Legislative Session
Relative to Terminology Referring to Persons with Disabilities**

Submitted to the Louisiana Legislature on

June 7, 2013

**REPORT TO THE LOUISIANA LEGISLATURE
IN RESPONSE TO HCR 88 OF THE 2011 REGULAR LEGISLATIVE SESSION
RELATIVE TO TERMINOLOGY REFERRING TO PERSONS WITH DISABILITIES
SUBMITTED BY THE LOUISIANA STATE LAW INSTITUTE
ON JUNE 7, 2013**

House Concurrent Resolution No. 88 ("HCR 88") of the 2011 Regular Legislative Session requested that the Louisiana State Law Institute ("Law Institute") evaluate terminology used to refer to persons with disabilities and propose alternative terminology to be used prospectively, to identify terms currently appearing in the law that convey negative or derogatory perceptions of persons with disabilities and recommend substitute language for these provisions, and to identify provisions of the law where substitutions of this language cannot be made because the substitution would alter or render ambiguous the substantive meaning of the current provision. Further, HCR 88 directs the Law Institute, in recommending substitute terminology, to use terminology that "puts the person before the disability."

The Law Institute staff has researched the occurrences and usage of terms that convey negative or derogatory perceptions of persons with disabilities and has provided substitute terms. The recommended substitutions have been reviewed by members of the Coordinating, Semantics, Style and Publications Committee and approved by the Council of the Law Institute. One member expressed concern about unintentionally broadening the application of affected provisions or changing the names of programs with the substitution of recommended terms. Accordingly, staff respectfully submits this report to serve as general information and guidance and would recommend a case-by-case review of the use of these terms to ensure the appropriateness of substituting recommended terms in a particular statute or article. Where possible, the definitions of terms currently in use are provided. Where the terms are not defined, the generally prevailing meaning is provided. Terms that may be replaced at all instances without changing the application of current law have been identified. A list of occurrences of each of the terms has also been provided.

Where substitutions are made, it is important to note that persons with disabilities should not be referred to as "suffering from" or "being" a given condition but, instead, as "having" or "being a person with" that diagnosis.

"INFIRM"

"The mentally infirm" or "the physically infirm" are terms cited by HCR 88 as examples of language that may be considered demeaning or disrespectful to persons with disabilities. The term is not defined in the law, but "infirm" usually describes someone who is "not strong and healthy; physically weak or feeble, [especially] through age."¹

¹ *Infirm Definition (2)(a)*, THE OXFORD ENGLISH DICTIONARY ONLINE, <http://www.oed.com> (last visited Feb. 13, 2012).

Our law makes a distinction between those who are infirm (or "infirm") and those who have disabilities. Most of the provisions referring to "infirm" persons also refer to "disabled" persons, including two provisions cited in HCR 88.² In the remaining provisions, the term "infirm" is used with the term "aged" or is used alone to refer to a broad range of conditions limiting a person's abilities. For example, in La. R.S. 14:93.5, also cited in HCR 88, a victim of sexual battery of the infirm may be incapable of preventing the act "because of advanced age or physical infirmity," "by reason of stupor or abnormal condition of the mind produced by an intoxicating, narcotic, or anesthetic agent administered by or with the privity of the offender," "by reason of a stupor or abnormal condition of mind from any cause," or "through unsoundness of mind, whether temporary or permanent."³ The term seems to be a general term referring to persons who are not healthy.

Unfortunately, because "infirm" is not well-defined and used differently in each occurrence, there is not one phrase that would be a satisfactory substitution in each instance. To use person-first language, the phrase "persons with an infirmity" may in some instances be substituted for "the infirm," and "persons with disabilities" may be substituted in other instances. A case-by-case analysis would be required to replace this term with a preferred one.

"CRIPPLED"

The term "crippled" is not defined in our law, but it is usually considered an offensive term used to refer to one who is "disabled from the use of one's limbs."⁴ This term should be substituted with the phrase "persons with physical disabilities."

"DUMB"

The term "dumb" is not defined in our law, but its usual meaning is "destitute of the faculty of speech."⁵ The term should be substituted with the phrase "persons who are unable to speak."

² "Simple battery of the infirm is a battery committed against an infirm, disabled, or aged person . . ." LA. REV. STAT. ANN. §14:35.2(A) (2013). "Cruelty to the infirmed is the intentional or criminally negligent mistreatment or neglect [of] the infirmed, a disabled adult, or an aged person . . ." LA. REV. STAT. ANN. § 14:93.3(A) (2013).

³ LA. REV. STAT. ANN. § 14:93.5(A) (2013).

⁴ *Crippled Definition*, THE OXFORD ENGLISH DICTIONARY ONLINE, <http://www.oed.com> (last visited Feb. 13, 2012).

⁵ *Dumb Definition (A)(1)(a)*, THE OXFORD ENGLISH DICTIONARY ONLINE, <http://www.oed.com> (last visited Feb. 13, 2012).

"HANDICAPPED"

The term "handicapped" is not generally defined in our law, though it is defined in several provisions for the purposes of those Chapters.⁶ It is usually defined as one who is "physically or mentally disabled."⁷ The term may be replaced with "persons with disabilities," but a case-by-case review is recommended.

"RETARDED," "MENTAL RETARDATION," OR "MENTALLY RETARDED"

"Retarded," "mental retardation" or "mentally retarded" are terms that are widely considered to provide negative or derogatory perceptions of persons with disabilities. One definition of the term "mental retardation" is provided in La. C.Cr.P. art. 905.5.1(H)(1), as follows: "'Mental retardation' means a disability characterized by significant limitations in both intellectual functioning and adaptive behavior as expressed in conceptual, social, and practical adaptive skills. The onset must occur before the age of eighteen years." This definition is derived from the criteria required for the same diagnosis in the Diagnostic and Statistical Manual of Mental Disorders, fourth edition, widely known as "DSM-IV," a manual published by the American Psychiatric Association that includes all currently recognized mental health disorders.⁸

Efforts to replace this term with preferred terms have already begun. In 2010, Congress enacted "Rosa's Law" (Appendix B) to amend instances of this term in federal law and substitute the terms "intellectual disabilities," "having intellectual disabilities," or "individuals with intellectual disabilities" as appropriate.⁹ Texas subsequently enacted H.B. 1481 (Appendix C), substituting the phrase "intellectual disabilities" throughout state law.¹⁰

The substitutions made by Rosa's Law were made only to a few areas of the law, namely the Individuals with Disabilities Education Act, the vocational rehabilitation program, the Americans with Disabilities Act, and certain health care provisions. Other statutes, such as the Social Security Act and the programs subject to it, still use the term "mental retardation," possibly to comport with the diagnosis in the DSM-IV. However, the fifth edition of the DSM, DSM-5, published in May 2013, changed the diagnostic term "mental retardation" to

⁶ *Eg.*, "Handicapped: having a permanent physical impairment which includes any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, speech organs, skin, and endocrine, which substantially limits one or more major life activity of an individual, as defined in R.S. 28:477(3)(a), as verified by two physicians or as certified by the Veteran's Administration as meeting the qualifications and approved by the division." LA. REV. STAT. ANN. §39:1952(14)(e).

⁷ *Handicapped Definition*, THE OXFORD ENGLISH DICTIONARY ONLINE, <http://www.oed.com> (last visited Feb. 13, 2012).

⁸ AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (DSM-IV-TR) 41-42 (4th ed. 2000).

⁹ Rosa's Law, Pub. L. No. 111-256, 124 Stat 2643 (2010).

¹⁰ H.B. 1481, 2011 Leg., 82nd Sess. (Tex. 2011), enacted June 17, 2011 and effective Sept. 1, 2011.

"intellectual disability."¹¹ This term (and variations of the term) should be replaced at each instance.¹²

"IDIOCY," "IDIOTIC," "IMBECILITY," "FEEBLE-MINDED," AND "MENTALLY DEFECTIVE"

General recommendation: substitute with "persons with intellectual disabilities"

The terms "idiocy," "idiotic," "imbecility," "feeble-minded," and "mentally defective" were all clinical terms dating back to the late 19th century, used to describe the placement of patients on an I.Q. scale and their level of intellectual impairment (or mental retardation).¹³ The recommendation is to replace these terms with "intellectual disabilities" or "persons with intellectual disabilities," as appropriate, at each instance.

Exception: Various or unnecessary uses of "mentally defective"

Use of the term "mentally defective" in Title 28 of the Louisiana Revised Statutes (Mental Health) makes its meaning as applied in those provisions unclear. For example, the term is used in R.S. 28:58 in reference to criminal proceedings in which a person is "mentally defective to the extent that he is unable to understand the proceeding against him or assist in his defense."¹⁴ This provision is included in Part III of Chapter 1 of Title 28, entitled "Examination, Admission, Committee, and Treatment of Persons Suffering from Mental Illness and Substance Abuse." The term, historically used to mean "mental retardation," may be being misused as a general term for all persons with a mental impairment.¹⁵

If "mentally defective" is being used as a general term for impairments of the mind, there is no recommendation for replacing it; there is no appropriate, broad substitute term. The affected provisions require a case-by-case analysis for appropriate substitutions identifying the conditions intended to be covered.

¹¹ Eg., *New DSM-5 Officially Released!* COUNCIL FOR EXCEPTIONAL CHILDREN, <http://www.policyinsider.org/2013/05/new-dsm-5-officially-released.html> (last visited June 5, 2013).

¹² In Louisiana, the term "developmental disabilities" appears in over 100 provisions of state law. This term is not synonymous with the definition for "mental retardation" under state law or the DSM. Louisiana's definition of "developmental disabilities" comports with the DSM-IV definition of "pervasive developmental disorders," which includes autism-spectrum disorders. See LA. REV. STAT. ANN. § 28:451.2(12) (2013); *supra* note 8, 69-85. It is essential that the references to "developmental disabilities" in current law be maintained and that this term not be used when referring to the diagnosis identified as "mental retardation."

¹³ See NAOMI NORSWORTHY, PH.D., *THE PSYCHOLOGY OF MENTALLY DEFICIENT CHILDREN*, 4-7, 17-20 (R. S. Woodworth, ed. 1908), 8 GREAT BRITAIN COMMISSIONS FOR THE CARE AND CONTROL OF THE FEEBLE-MINDED, REPORT OF THE ROYAL COMMISSION ON THE CARE AND CONTROL OF THE FEEBLE-MINDED 324-325 (1908); Shereen Benjamin, *From "Idiot Child" to "Mental Defective": schooling and the production of intellectual disabilities in the UK 1850-1944*, 1 J. OF DOCT'L RES. EDUC. 23 (2001).

¹⁴ See LA. CODE CRIM. PROC. ANN. art. 641 (2013).

¹⁵ By contrast, the term "mental deficiency" is used in the same Title (R.S. 28:721) and has a definition similar to that of "mental retardation." A similar definition of "mental deficiency" is also used in Ch.C. art. 1003(8).

The phrase "mentally defective" in R.S. 13:1336(C)(1) and 1338(A) and C.Cr.P. art. 648(B)(1) can be deleted without changing the meaning of the provision.

Person-first language

There are hundreds of instances in the law where people are equated with their conditions, e.g. mentally ill, quadriplegic/paraplegic, or autistic. The Legislature may wish to amend these provisions in favor of person-first language, as was done by Act 418 of the 2012 Regular Legislative Session (Appendix D). "Mentally ill" would become "persons with mental illness," "quadriplegic/paraplegic" would become "persons with quadriplegia or paraplegia," and "autistic" would become "persons with autism."

Finally, in any legislation resulting from this report, a statement of legislative intent may be included memorializing that the substitute terms refer to conditions formerly known by the original phrases and that the amendment is not intended to impact rights, responsibilities, interpretation, or eligibility under the affected provisions. Examples of such language appear in both Rosa's law and Texas H.B. 1481.¹⁶ The legislature may also wish to include direction to administrative agencies to use the preferred language in agency rules and materials, as was done in Rosa's Law and Texas H.B. 1481.

¹⁶ Appendix B, pp. 10-11, §§ 2(k), 3-4; Appendix C, p. 14, lines 23-27; p. 15, lines 1-15.

OCCURRENCES OF TERMS

"Infirm" or "Infirmed"

R.S. 9:5604, 5605, 5606, 5607, 5628, and 5628.1; R.S. 14:35.2, 93.3, 93.4, 93.5, 106; R.S. 15:536, 537, 541, 571.3, 571.34; R.S. 17:124; R.S. 28:22.7; R.S. 29:514 and 726; R.S. 35:200; R.S. 37:961; R.S. 40:2010.9, 2120.2, and 2142; R.S. 46:61, 437.14, 461, 462, 464, and 1844; and C.Cr.P. Arts. 573.1, 648 and 814

"Crippled"

R.S. 9:1613, R.S. 46:541, and R.S. 47:463.51*

"Dumb"

C.C. Art. 3107

"Handicapped"

R.S. 9:2799 and 9:2799.3; R.S. 11:293, 446, 471, 471.1, 472, 478, 542.1.1, 562, 562.1, 604, 612, 618, 1151, 1151.1, 1318, 1323, 1345.8, 1399.3, 2077, 2220, 2241.8, 2242.8, 2256, 2256.2, 3378, 3516, 3516, 3552, and 3645; R.S. 14:32 and 39; R.S. 17:1986*; R.S. 18:106.1*, 115, 177, 1303*, and 1333*; R.S. 21:51 and 52; the heading of R.S. 22:1001 and 1012; R.S. 23:1823, 1829, 2061, and 3004; R.S. 25:33; R.S. 28:475, 476, 477, and 824*; R.S. 32:403.2 and 863.1; R.S. 33:1236, 1947, and the heading of R.S. 33:2411; R.S. 37:3003; R.S. 38:2261; R.S. 39:362, 1484, 1594, 1595.4, and 1952; R.S. 40:5, 442, 1299.113, 1299.118, 1299.119, 1300.85, 1355, 1400, 1563, 1573.1, 1574.1, 1730.39, 1730.66, the heading of Part V-A of Chapter 8 of Title 40 of the Revised Statutes, and 2113.5; R.S. 46:51, 56, 932, 1403, 1952, the heading of Chapter 27 of Title 46 of the Revised Statutes*, 2111 through 2114, the heading of Chapter 29 of Title 46 of the Revised Statutes, the heading of R.S. 29:2200, 2201, 2203, 2251, 2253, 2254, 2256, 2262*, 2584, and 2673; R.S. 47:34, 287.749, 463.4, 463.4.2, 463.4.3, 463.21, 473.2, and 1061; R.S. 48:261; the heading of Subpart D of Part VIII of Chapter 1 of Title 49 of the Revised Statutes, 148 and 148.1; R.S. 51:2606; and R.S. 56:1699

"Retarded," "mental retardation" or mentally retarded"

R.S. 4:163.1* and 715; R.S. 11:562, 562.1, 783, 2220, 2256, 3438, and 3553; R.S. 14:35.2, 93.3, 93.4, and 126.3; R.S. 15:830 and 830.1; R.S. 22:941, 1000, 1003, 1097, and 1242; R.S. 23:322, 1371.1, and 1378; R.S. 28:2, the heading of Part VIII of Chapter 1 of Title 28 of the Revised Statutes, 200, 201, 203, 204, 205, 476, 478, 831, 854, 864, and 874; R.S. 33:1236; R.S. 36:251, 254, and 258; R.S. 37:1021, 1023, and 1025; R.S. 39:1484 and 1494.1; R.S. 40:1299.27, 1379.3, 1472.3, 2009.21, 2013, 2013.54*, 2102, 2113.1, and 2116; R.S. 46:51, 53, 1053*, 1403, 2253, 2391, and 2681; R.S. 47:44.1, 79, 305.38, 322.46*, 332.52*, and 337.9; R.S. 51:2232; R.S. 56:302.1 and 1699; the heading of Section 12 of Chapter 1 of Title VIII of Book I of the Civil Code, Arts. 354, 356, 358, 359, and 360; C.Cr.P. Arts. 658 and 905.5.1; and Ch.C. Arts. 683, 781, 837.1, 895, 1003, 1125 and 1404

"Idiocy" or "idiotic"

R.S. 14:89.1 and R.S. 23:251

"Imbecility"

R.S. 14:89.1

"Feeble-minded"

R.S. 14:45, R.S. 15:581 and 1039

"Mentally defective"

R.S. 13:1336 and 1338; R.S. 28:22.5, 22.9, 58, 96, 96.1, 99, and 100; and C.Cr.P. Art. 648

* This provision refers to an organization, office, program, or enactment that features the term.

Regular Session, 2011

HOUSE CONCURRENT RESOLUTION NO. 88

BY REPRESENTATIVES LEGER, LOPINTO, AND WHITE

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to review and evaluate terminology that is currently contained in Louisiana law which refers to persons with disabilities, to propose alternative terminology to be used prospectively by the Legislature of Louisiana when enacting or amending legislation which refers to persons with disabilities, to identify and recommend for substitution terms currently appearing in Louisiana law which convey negative or derogatory perceptions of persons with disabilities, and to recommend replacement terminology for these identified provisions.

WHEREAS, the Legislature of Louisiana is committed to promoting the respect and dignity of all individuals; and

WHEREAS, many provisions of existing Louisiana law refer to certain persons as "mentally infirm" or "physically infirm", including but not limited to simple battery of the infirm (R.S. 14:35.2), sexual battery of the infirm (R.S. 14:93.5), and cruelty to the infirmed (R.S. 14:93.3); and

WHEREAS, the Legislature of Louisiana recognizes that language used in reference to individuals with disabilities shapes and reflects society's attitudes toward people with disabilities; and

WHEREAS, the Legislature of Louisiana recognizes that certain terms, including "infirm", could be construed as demeaning or disrespectful and could create an invisible barrier to the inclusion of these individuals with disabilities as equal community members; and

WHEREAS, in addressing this issue, it is necessary for the Louisiana State Law Institute to evaluate and recommend preferred language, for newly enacted laws and future revisions to current laws, which uses terminology that puts the person before the disability,

that avoids the use of language that implies that a person as a whole is disabled, or that equates persons with their conditions.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to review and evaluate terminology that is currently contained in Louisiana law which refers to persons with disabilities, and to propose alternative terminology to be used prospectively by the Legislature of Louisiana when enacting or amending legislation which refers to persons with disabilities.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute identify and recommend for substitution terms currently appearing in Louisiana law which convey negative or derogatory perceptions of persons with disabilities and recommend replacement terminology for these identified provisions.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute identify and report to the legislature provisions of current law in which terminology changes may not be made because the change would alter or render ambiguous the substantive meaning of any current provision of law.

BE IT FURTHER RESOLVED that the Louisiana State Law Institute report its findings and recommendations to the Legislature of Louisiana prior to the convening of the 2012 Regular Session of the Legislature of Louisiana.

BE IT FURTHER RESOLVED that a copy of this Resolution be transmitted to the Louisiana State Law Institute.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

One Hundred Eleventh Congress
of the
United States of America

AT THE SECOND SESSION

*Began and held at the City of Washington on Tuesday,
the fifth day of January, two thousand and ten*

An Act

To change references in Federal law to mental retardation to references to an intellectual disability, and change references to a mentally retarded individual to references to an individual with an intellectual disability.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as “Rosa’s Law”.

SEC. 2. INDIVIDUALS WITH INTELLECTUAL DISABILITIES.

(a) HIGHER EDUCATION ACT OF 1965.—Section 760(2)(A) of the Higher Education Act of 1965 (20 U.S.C. 1140(2)(A)) is amended by striking “mental retardation or”.

(b) INDIVIDUALS WITH DISABILITIES EDUCATION ACT.—

(1) Section 601(c)(12)(C) of the Individuals with Disabilities Education Act (20 U.S.C. 1400(c)(12)(C)) is amended by striking “having mental retardation” and inserting “having intellectual disabilities”.

(2) Section 602 of such Act (20 U.S.C. 1401) is amended—

(A) in paragraph (3)(A)(i), by striking “with mental retardation” and inserting “with intellectual disabilities”; and

(B) in paragraph (3)(C), by striking “of mental retardation” and inserting “of intellectual disabilities”.

(c) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—Section 7202(16)(E) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7512(16)(E)) is amended by striking “mild mental retardation,” and inserting “mild intellectual disabilities,”.

(d) REHABILITATION ACT OF 1973.—

(1) Section 7(21)(A)(iii) of the Rehabilitation Act of 1973 (29 U.S.C. 705(21)(A)(iii)) is amended by striking “mental retardation,” and inserting “intellectual disability,”.

(2) Section 204(b)(2)(C)(vi) of such Act (29 U.S.C. 764(b)(2)(C)(vi)) is amended by striking “mental retardation and other developmental disabilities” and inserting “intellectual disabilities and other developmental disabilities”.

(3) Section 501(a) of such Act (29 U.S.C. 791(a)) is amended, in the third sentence, by striking “President’s Committees on Employment of People With Disabilities and on Mental Retardation” and inserting “President’s Disability Employment Partnership Board and the President’s Committee for People with Intellectual Disabilities”.

(e) HEALTH RESEARCH AND HEALTH SERVICES AMENDMENTS OF 1976.—Section 1001 of the Health Research and Health Services

Amendments of 1976 (42 U.S.C. 217a-1) is amended by striking “the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963,”

(f) PUBLIC HEALTH SERVICE ACT.—

(1) Section 317C(a)(4)(B)(i) of the Public Health Service Act (42 U.S.C. 247b-4(a)(4)(B)(i)) is amended by striking “mental retardation;” and inserting “intellectual disabilities;”

(2) Section 448 of such Act (42 U.S.C. 285g) is amended by striking “mental retardation,” and inserting “intellectual disabilities,”

(3) Section 450 of such Act (42 U.S.C. 285g-2) is amended to read as follows:

“SEC. 450. RESEARCH ON INTELLECTUAL DISABILITIES.

“The Director of the Institute shall conduct and support research and related activities into the causes, prevention, and treatment of intellectual disabilities.”

(4) Section 641(a) of such Act (42 U.S.C. 291k(a)) is amended by striking “matters relating to the mentally retarded” and inserting “matters relating to individuals with intellectual disabilities”.

(5) Section 753(b)(2)(E) of such Act (42 U.S.C. 294c(b)(2)(E)) is amended by striking “elderly mentally retarded individuals” and inserting “elderly individuals with intellectual disabilities”.

(6) Section 1252(f)(3)(E) of such Act (42 U.S.C. 300d-52(f)(3)(E)) is amended by striking “mental retardation/developmental disorders,” and inserting “intellectual disabilities or developmental disorders,”

(g) HEALTH PROFESSIONS EDUCATION PARTNERSHIPS ACT OF 1998.—Section 419(b)(1) of the Health Professions Education Partnerships Act of 1998 (42 U.S.C. 280f note) is amended by striking “mental retardation” and inserting “intellectual disabilities”.

(h) PUBLIC LAW 110-154.—Section 1(a)(2)(B) of Public Law 110-154 (42 U.S.C. 285g note) is amended by striking “mental retardation” and inserting “intellectual disabilities”.

(i) NATIONAL SICKLE CELL ANEMIA, COOLEY’S ANEMIA, TAY-SACHS, AND GENETIC DISEASES ACT.—Section 402 of the National Sickle Cell Anemia, Cooley’s Anemia, Tay-Sachs, and Genetic Diseases Act (42 U.S.C. 300b-1 note) is amended by striking “leading to mental retardation” and inserting “leading to intellectual disabilities”.

(j) GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008.—Section 2(2) of the Genetic Information Nondiscrimination Act of 2008 (42 U.S.C. 2000ff note) is amended by striking “mental retardation,” and inserting “intellectual disabilities,”

(k) REFERENCES.—For purposes of each provision amended by this section—

(1) a reference to “an intellectual disability” shall mean a condition previously referred to as “mental retardation”, or a variation of this term, and shall have the same meaning with respect to programs, or qualifications for programs, for individuals with such a condition; and

(2) a reference to individuals with intellectual disabilities shall mean individuals who were previously referred to as individuals who are “individuals with mental retardation” or “the mentally retarded”, or variations of those terms.

SEC. 3. REGULATIONS.

For purposes of regulations issued to carry out a provision amended by this Act—

(1) before the regulations are amended to carry out this Act—

(A) a reference in the regulations to mental retardation shall be considered to be a reference to an intellectual disability; and

(B) a reference in the regulations to the mentally retarded, or individuals who are mentally retarded, shall be considered to be a reference to individuals with intellectual disabilities; and

(2) in amending the regulations to carry out this Act, a Federal agency shall ensure that the regulations clearly state—

(A) that an intellectual disability was formerly termed mental retardation; and

(B) that individuals with intellectual disabilities were formerly termed individuals who are mentally retarded.

SEC. 4. RULE OF CONSTRUCTION.

This Act shall be construed to make amendments to provisions of Federal law to substitute the term “an intellectual disability” for “mental retardation”, and “individuals with intellectual disabilities” for “the mentally retarded” or “individuals who are mentally retarded”, without any intent to—

(1) change the coverage, eligibility, rights, responsibilities, or definitions referred to in the amended provisions; or

(2) compel States to change terminology in State laws for individuals covered by a provision amended by this Act.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

1 AN ACT
2 relating to the use of person first respectful language in
3 reference to individuals with disabilities.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Subtitle Z, Title 3, Government Code, is amended
6 by adding Chapter 392 to read as follows:

7 CHAPTER 392. PERSON FIRST RESPECTFUL LANGUAGE INITIATIVE

8 Sec. 392.001. FINDINGS AND INTENT. The legislature finds
9 that language used in reference to persons with disabilities shapes
10 and reflects society's attitudes toward persons with disabilities.
11 Certain terms and phrases are demeaning and create an invisible
12 barrier to inclusion as equal community members. It is the intent
13 of the legislature to establish preferred terms and phrases for new
14 and revised laws by requiring the use of language that places the
15 person before the disability.

16 Sec. 392.002. USE OF PERSON FIRST RESPECTFUL LANGUAGE
17 REQUIRED. (a) The legislature and the Texas Legislative Council
18 are directed to avoid using the following terms and phrases in any
19 new statute or resolution and to change those terms and phrases used
20 in any existing statute or resolution as sections including those
21 terms and phrases are otherwise amended by law:

- 22 (1) disabled;
23 (2) developmentally disabled;
24 (3) mentally disabled;

- 1 (4) mentally ill;
- 2 (5) mentally retarded;
- 3 (6) handicapped;
- 4 (7) cripple; and
- 5 (8) crippled.

6 (b) In enacting or revising statutes or resolutions, the
7 legislature and the Texas Legislative Council are directed to
8 replace, as appropriate, terms and phrases listed by Subsection (a)
9 with the following preferred phrases or appropriate variations of
10 those phrases:

- 11 (1) "persons with disabilities";
- 12 (2) "persons with developmental disabilities";
- 13 (3) "persons with mental illness"; and
- 14 (4) "persons with intellectual disabilities."

15 (c) A statute or resolution is not invalid solely because it
16 does not employ this section's preferred phrases.

17 SECTION 2. Chapter 325, Government Code, is amended by
18 adding Section 325.0123 to read as follows:

19 Sec. 325.0123. REVIEW OF CERTAIN AGENCIES FOR RESPECTFUL
20 LANGUAGE. (a) As part of its review of a health and human services
21 agency, the commission shall consider and make recommendations
22 regarding the statutory revisions necessary to use the phrase
23 "intellectual disability" instead of "mental retardation" and to
24 use the phrase "person with intellectual disability" instead of
25 "person with mental retardation."

26 (b) As part of its review of an agency, the commission shall
27 consider and recommend, as appropriate, statutory revisions in

1 accordance with the person first respectful language initiative
2 under Chapter 392.

3 SECTION 3. Subchapter B, Chapter 531, Government Code, is
4 amended by adding Section 531.0227 to read as follows:

5 Sec. 531.0227. PERSON FIRST RESPECTFUL LANGUAGE PROMOTION.
6 The executive commissioner shall ensure that the commission and
7 each health and human services agency use the terms and phrases
8 listed as preferred under the person first respectful language
9 initiative in Chapter 392 when proposing, adopting, or amending the
10 commission's or agency's rules, reference materials, publications,
11 and electronic media.

12 SECTION 4. Subchapter C, Chapter 7, Education Code, is
13 amended by adding Section 7.063 to read as follows:

14 Sec. 7.063. PERSON FIRST RESPECTFUL LANGUAGE PROMOTION.
15 The commissioner shall ensure that the agency uses the terms and
16 phrases listed as preferred under the person first respectful
17 language initiative in Chapter 392, Government Code, when
18 proposing, adopting, or amending the agency's rules, reference
19 materials, publications, and electronic media.

20 SECTION 5. Section 591.003, Health and Safety Code, is
21 amended by adding Subdivisions (7-a) and (15-a) and amending
22 Subdivisions (13) and (16) to read as follows:

23 (7-a) "Intellectual disability" means significantly
24 subaverage general intellectual functioning that is concurrent
25 with deficits in adaptive behavior and originates during the
26 developmental period.

27 (13) "Mental retardation" means intellectual

1 ~~disability [means significantly subaverage general intellectual~~
2 ~~functioning that is concurrent with deficits in adaptive behavior~~
3 ~~and originates during the developmental period].~~

4 (15-a) "Person with intellectual disability" means a
5 person determined by a physician or psychologist licensed in this
6 state or certified by the department to have subaverage general
7 intellectual functioning with deficits in adaptive behavior.

8 (16) "Person with mental retardation" means a person
9 with intellectual disability [~~a person determined by a physician or~~
10 ~~psychologist licensed in this state or certified by the department~~
11 ~~to have subaverage general intellectual functioning with deficits~~
12 ~~in adaptive behavior].~~

13 SECTION 6. It is not the intent of the legislature that the
14 changes in law made by this Act affect the application or
15 interpretation of the Penal Code or eligibility for any program.

16 SECTION 7. This Act takes effect September 1, 2011.

H.B. No. 1481

President of the Senate

Speaker of the House

I certify that H.B. No. 1481 was passed by the House on March 30, 2011, by the following vote: Yeas 146, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1481 was passed by the Senate on May 19, 2011, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

APPROVED: _____

Date

Governor

Regular Session, 2012

ACT No. 418

HOUSE BILL NO. 846

BY REPRESENTATIVES SIMON, BADON, BERTHELOT, BILLIOT, WESLEY BISHOP, BROWN, HENRY BURNS, COX, DOVE, GAROFALO, GISCLAIR, HARRIS, HOFFMANN, HOWARD, JAMES, JEFFERSON, LEGER, LIGI, MORENO, POPE, REYNOLDS, RICHARD, RICHARDSON, SHADOIN, AND THOMPSON

1 AN ACT

2 To amend and reenact R.S. 28:2(14), (17), and (29)(a)(introductory paragraph), 52(A) and
3 (C), 52.1(A), 52.2(A), 52.3(A), 53(A)(1), 55(J), 64(D), and 772(E) and to enact R.S.
4 28:171.1, relative to mental health law; to provide for definitions; to establish
5 principles for the state mental health system; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 28:2(14), (17), and (29)(a)(introductory paragraph), 52(A) and (C),
8 52.1(A), 52.2(A), 52.3(A), 53(A)(1), 55(J), 64(D), and 772(E) are hereby amended and
9 reenacted and R.S. 28:171.1 is hereby enacted to read as follows:

10 §2. Definitions

11 Whenever used in this Title, the masculine shall include the feminine, the
12 singular shall include the plural, and the following definitions shall apply:

13 * * *

14 (14) "~~Mentally ill person~~" "Person who is mentally ill" means any person
15 with a psychiatric disorder which has substantial adverse effects on his ability to
16 function and who requires care and treatment. It does not refer to a person suffering
17 solely from mental retardation, epilepsy, alcoholism, or drug abuse.

18 * * *

19 (17) "Patient" means any person detained and taken care of as a person who
20 is mentally ill ~~person~~ or person who is suffering from substance abuse.

21 * * *

1 (29)(a) "Treatment facility" means any public or private hospital, retreat,
 2 institution, mental health center, or facility licensed by the state in which any person
 3 who is mentally ill ~~person~~ or person who is suffering from substance abuse is
 4 received or detained as a patient. The term includes Veterans Administration and
 5 public health hospitals and forensic facilities. "Treatment facility" includes but is not
 6 limited to the following, and shall be selected with consideration of first, medical
 7 suitability; second, least restriction of the person's liberty; third, nearness to the
 8 patient's usual residence; and fourth, financial or other status of the patient, except
 9 that such considerations shall not apply to forensic facilities:

* * *

10
11 §52. Voluntary admissions; general provisions

12 A. Any person who is mentally ill ~~person~~ or person who is suffering from
 13 substance abuse may apply for voluntary admission to a treatment facility. The
 14 admitting physician may admit the person on either a formal or informal basis, as
 15 hereinafter provided.

* * *

16
17 C. No director of a treatment facility shall prohibit any person who is
 18 mentally ill ~~person~~ or person who is suffering from substance abuse from applying
 19 for conversion of involuntary or emergency admission status to voluntary admission
 20 status. Any patient on an involuntary admission status shall have the right to apply
 21 for a writ of habeas corpus in order to have his admission status changed to voluntary
 22 status.

* * *

23
24 §52.1. Informal voluntary admission

25 A. In the discretion of the director, any person who is mentally ill ~~person~~ or
 26 person who is suffering from substance abuse desiring admission to a treatment
 27 facility for diagnosis or treatment of a psychiatric disorder or substance abuse may
 28 be admitted upon the patient's request without a formal application.

* * *

1 §52.2. Formal voluntary admission

2 A. Any person who is mentally ill ~~person~~ or person who is suffering from
3 substance abuse desiring admission to a treatment facility for diagnosis and/or
4 treatment of a psychiatric disorder or substance abuse and who is deemed suitable
5 for formal voluntary admission by the admitting physician may be so admitted upon
6 his written request.

7 * * *

8 §52.3. Noncontested admission

9 A. A person who is mentally ill ~~person~~ or person who is suffering from
10 substance abuse who does not have the capacity to make a knowing and voluntary
11 consent to a voluntary admission status and who does not object to his admission to
12 a treatment facility may be admitted to a treatment facility as a noncontested
13 admission. Such person shall be subject to the same rules and regulations as a person
14 admitted on a voluntary admission status and his treatment shall be governed by the
15 provisions of ~~R.S. 28:52H~~ R.S. 28:52(H).

16 * * *

17 §53. Admission by emergency certificate; extension

18 A.(1) A person who is mentally ill ~~person~~ or a person who is suffering from
19 substance abuse may be admitted and detained at a treatment facility for observation,
20 diagnosis, and treatment for a period not to exceed fifteen days under an emergency
21 certificate.

22 * * *

23 §55. Judicial hearings

24 * * *

25 J. No director of a treatment facility shall prohibit any person who is
26 mentally ill ~~person~~ or person who is suffering from substance abuse from applying
27 for conversion of involuntary or emergency admission status to voluntary admission

1 status. Any patient on an involuntary admission status shall have the right to apply
 2 for a writ of habeas corpus to have his admission status changed to voluntary status.

3 * * *

4 §64. Mental Health Advocacy Service; creation; board of trustees; organization;
 5 powers; duties

6 * * *

7 D.(1) Any attorney representing a person who is mentally ill ~~person~~ or a
 8 respondent as defined herein shall have ready access to view and copy all mental
 9 health and developmental disability records pertaining to his client, unless the client
 10 objects. If the patient or respondent later retains a private attorney to represent him,
 11 the mental health advocacy service shall destroy all copies of records pertaining to
 12 his case.

13 (2) Any attorney representing a person who is mentally ill ~~person~~ or a
 14 respondent as defined herein shall have the opportunity to consult with his client
 15 whenever necessary in the performance of his duties. A treatment facility shall
 16 provide adequate space and privacy for the purpose of attorney-client consultation.

17 * * *

18 §171.1. Principles for the mental health system

19 The department and any entity which receives funding through a state
 20 contract to provide services to persons who are mentally ill shall provide, to the
 21 maximum extent possible, mental health treatment, services, and supports which are
 22 consistent with the following principles:

23 (1) Treatment, services, and supports assist in enabling people to exercise
 24 self-determination in their lives.

25 (2) Treatment, services, and supports assist in enabling people to achieve
 26 their maximum potential through increased independence, productivity, and
 27 inclusion in their communities.

28 (3) Personal outcomes and goals are considered in the development of
 29 individualized supports for each person.

1 (4) The community where the person chooses to live and work is an
2 appropriate place to provide treatment, supports, and services.

3 (5) Persons with mental illness are generally best able to determine their own
4 needs, rather than their needs being determined by others.

5 (6) For children with mental illness, the needs of the entire family should be
6 considered in the development of family supports.

7 (7) Family supports may enable children to live in stable family
8 environments with enduring relationships with one or more adults regardless of the
9 severity of the mental illness of the child or the degree of support necessary.

10 (8) Children and young adults with mental illness receive and participate in
11 an appropriate education which enables them to have increased opportunities for well
12 being, development, and inclusion in their communities.

13 (9) Existing natural supports and community resources are promoted and
14 utilized.

15 * * *

16 §772. Funding of regional addictive disorder services

17 * * *

1 E. The secretary or assistant secretary of the department shall submit an
 2 annual report to each member of the legislature listing the contractors and the
 3 amounts such contractors received for the provision of regional addictive disorder
 4 services and services provided through grants which were received through
 5 application by the department or a regional office of the department.

* * *

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____