

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Criminal Justice Committee

BILL: CS/SB 1950

INTRODUCER: Children, Families and Elder Affairs Committee and Senator Rich

SUBJECT: Forensic Services for Persons Who are Retarded or Autistic

DATE: April 15, 2008 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Toman	Jameson	CF	Fav/CS
2.	Cellon	Cannon	CJ	Favorable
3.			JU	
4.			HA	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Committee Substitute for Senate Bill 1950 amends the definitions of autism and retardation in s. 916.106, F.S., clarifying that the definition of retardation for purposes of ch. 916, F.S., requires onset of the disability prior to age 18.

The bill amends s. 916.301, F.S., clarifying that the court must appoint at least two experts to evaluate competency when a criminal defendant is suspected to be retarded or autistic.

This bill substantially amends the following sections of the Florida Statutes: 916.106 and 916.301.

II. Present Situation:

Chapter 916, F.S., also called the “Forensic Client Services Act,” addresses the treatment and training of individuals who have been charged with felonies and found to be incompetent to proceed to trial due to mental illness, mental retardation or autism, or acquitted by reason of insanity.

Definitions of Retardation and Autism

Section 916.106, F.S., defines the terms “autism” and “retardation” with reference to s. 393.063, F.S., which defines the terms as follows:

- *Autism* means a pervasive, neurologically based developmental disability of extended duration which causes severe learning, communication, and behavior disorders with age of onset during infancy or childhood. Individuals with autism exhibit impairment in reciprocal social interaction, impairment in verbal and nonverbal communication and imaginative ability, and a markedly restricted repertoire of activities and interests.¹
- *Retardation* means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior.²

In the definition of retardation, *significantly subaverage general intellectual functioning* means performance which is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the agency, and *adaptive behavior* means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.³

Prior to 2006, the statutory definitions of “retardation” in Chapters 393 and 916, F.S., were identical, and both required onset prior to age 18. In 2006, the definition section of ch. 393, F.S., was substantially revised.⁴ The requirement that retardation must manifest prior to age 18 was moved from the definition of “retardation” to the definition of “developmental disability.”⁵

The definitions of “retardation” and “autism” in Chapter 916, F.S., were also amended to their current definitions in 2006.⁶ Because the terms are defined with reference to s. 393.063, F.S., and because the definition of “retardation” in s. 393.063, F.S., no longer requires onset prior to age 18, the definition of “retardation” in ch. 916, F.S., also does not require onset prior to age 18.

The generally accepted definition for mental retardation includes a requirement that it manifest prior to age 18.⁷

Appointment of Experts

If a defendant is suspected to be retarded or autistic, the court must appoint the following:

- At least one, or at the request of any party, two experts to evaluate whether the defendant meets the definition of retardation or autism and, if so, whether the defendant is competent to proceed.

¹ Section 393.063(3), F.S.

² Section 393.063(31), F.S.

³ *Id.*

⁴ Chapter 2006-227, L.O.F., s. 10.

⁵ *Id.* Pursuant to s. 393.63(9), F.S., developmental disability means a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome, that manifests before the age of 18, and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

⁶ Chapter 2006-195, L.O.F., s. 2.

⁷ See American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (4th ed. 1994).

- A psychologist selected by the agency who is licensed or authorized by law to practice in this state, with experience in evaluating persons suspected of having retardation or autism (to evaluate disability and competence) and a social service professional, with experience in working with persons with retardation or autism (to provide social and developmental history).⁸

The statute does not provide a connecting term (“and” or “or”) between these sentences and, as a result, according to the Agency for Persons with Disabilities (APD or the agency), it is not clear whether the statute mandates the appointment of one or two experts.⁹

III. Effect of Proposed Changes:

CS/SB 1950 amends the definitions of “autism” and “retardation” found in s. 916.106, F.S., removing the references in those definitions to s. 393.063, F.S., and replacing the references with the actual language of that section. The bill adds language to clarify that the definition of “retardation” for purposes of ch. 916, F.S., requires that the disability manifest prior to age 18 and be reasonably expected to continue indefinitely.

The bill amends s. 916.301, F.S., clarifying that the court must appoint at least two experts to evaluate competency when a criminal defendant is suspected to be retarded or autistic.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

⁸ Section 916.301(2), F.S.

⁹ APD, *2008 Bill Analysis SB 1950* (March 6, 2008).

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The definition of mental retardation, as it relates to prohibition of imposition of the death penalty upon a person with mental retardation in Florida, is not tied to any specific statutory cross-reference.

The pertinent section of the criminal law, section 921.137, Florida Statutes states:

As used in this section, the term “mental retardation” means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term “significantly subaverage general intellectual functioning,” for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Agency for Persons with Disabilities. The term “adaptive behavior,” for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. The Agency for Persons with Disabilities shall adopt rules to specify the standardized intelligence tests as provided in this subsection.

It is not foreseen nor expected that the definition amended by this bill would have an effect upon the death penalty prohibition.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families and Elder Affairs on March 26, 2008:

Deletes provision requiring that APD receive notice and an opportunity to be heard in all competency proceedings involving retarded or autistic defendants.

B. Amendments:

None.