

**FINAL PROJECT REPORT**

Usage of the Term “Mental Retardation:” Language, Image and Public Education

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## I. Executive Summary

The Resource Network International contracted with the Kansas University Center for the Study of Family, Neighborhood and Community Policy to do an in-depth study related to the past and current use of the term "mental retardation" in the context of government programs. The Policy Center produced an extensive research bibliography, five research summaries on relevant questions, and five sets of notes on selected related topics. This is the final report of the project. The Kansas University Center on Developmental Disabilities, the parent organization of the Policy Center, will present the results to the AAMR Board of Directors the last week of May, 2002, and will assist AAMR in disseminating it to the public thereafter.

The contract asked for the answer to four questions the answers to which are summarized below:

1. **What are the trends over the past decade in textbooks and research articles in their use (including in relationship to both prognosis and diagnosis) and definition of the term "mental retardation"?** There are many definitions of mental retardation but four are the most prevalent, i.e. the AAMR 1992 definition, the DSM IV 1994 definition, The ICD 10 1994 definition, and the APA 1996 definition. Of these, the AAMR definition is the most used in the U.S. and the ICD 10 definition is the most used outside the U.S. Textbooks and research articles on the topic of mental retardation are quite consistent, while other related textbooks and test manuals are not consistent in their use of an accepted definition of mental retardation. In the U.S. the AAMR 1992 definition has increased in usage over the past decade. Nearly all efforts at definition have been directed toward diagnosis rather than toward prognosis.
2. **How does the term "mental retardation" in the U.S. compare with the terminology in other countries and by international organizations to describe the same population and characteristics?** The term "mental retardation" is used consistently in the U. S. far more than other terms. The next most consistent equivalent term is "intellectual disability", which is used in British Commonwealth countries and by the International Society for the Scientific Study of Intellectual Disabilities. The ICD 10 definition, which is essentially the same as the DSM IV

definition, is the most cited definition overall internationally. It uses the term "mental retardation." Countries often have their own idiosyncratic terms which they use. Recently, there has been a move away from the term "mental retardation", but no substitute has been agreed upon.

3. **How and to what extent is the label "mentally retarded" viewed as pejorative within the general culture and media, by service professionals and by their families?** The general consensus among activists and responders to surveys, be they advocates, clinicians, families, parents, or other professionals, is that the term has negative connotations, although many concede that any substitute for the same population will also soon develop stigmatizing qualities. Whether they are representative of the far larger population of people with mental retardation is unknown. There is also fear among some that a name change will endanger entitlement programs, however this is also known. The current momentum is to change the term.
4. **To what extent do changes in the use or definition of the term "mental retardation" (including the use of other terms) represent federal and state policy shifts?** With respect to determination of program eligibility, citizenship, legal status, and criminal justice, there have been few federal or state policies affected by the use of the term "mental retardation" in the past 20 years. The one exception is the adoption of the term "developmental delay" by IDEA 1997 in its Part C (birth to three) programs. While federal programs uniformly govern immigration status and eligibility for citizenship, voting, military service, non-discrimination and equal opportunity protections, there is considerable variability among states in their laws concerning termination of parental rights, legal competence, and competence to stand trial and sentencing.

## II. Introduction

### A. Background

The term “mental retardation” is currently under attack by many self-advocates, and caregivers, service providers, educators, and other professionals. It is believed to promote stigma and a negative image of persons so labeled.

The definition of mental retardation has changed nine times over the past 100 years in the U.S. It will soon change again, to meet the many needs, to reflect gains in knowledge and to promote the dignity and well-being of persons affiliated with the term.

An ancient Chinese proverb says, “Wisdom begins by calling things by their right name.” During this period of flux and transition, there may be an opportunity to get the name right for people with mental retardation.

Resource Network International (RNI) currently provides detailed technical and administrative support under a contract with the administration of Developmental Disabilities of the U.S. Department of Health and Human Services. Under this contract, RNI has been asked to conduct research related to the past and current use of the term “mental retardation” in the context of government programs. To this end, RNI subcontracted with the Center for the Study of Family, Neighborhood and Community Policy of the University of Kansas Center on Developmental Disabilities to answer six specific research questions. Therefore, this agreement was made under the following work plan.

### B. Work Plan

Over a 7-month period (i.e., July 1, 2001 through January 31, 2002), the Center for the Study of Family, Neighborhood and Community Policy of the University of Kansas will conducted research designed to arrive at the answers to each of six core research questions:

1. How is the term “mental retardation” currently defined in diagnostic manuals, research reports and textbooks and by national data-gathering entities?
2. To what extent is a diagnosis of “mental retardation” currently used to determine the eligibility

of individuals for child or adult services? What other terms are currently used in such manuals, reports and textbooks and by national data-gathering entities to identify the same population or to “diagnose” or identify the same characteristics?

3. Over the last decade, what are the trends (generally and in textbooks and research articles) in the use (including in relationship to both prognosis and diagnosis) and definition of the term “mental retardation”? What factors appear to have influenced changes in the use or definition of the term?
4. How does the current use of the term “mental retardation” in the United States compare with the terminology used in other countries and by international organizations to describe the same population and characteristics?
5. How and to what extent is the label “mentally retarded” viewed as pejorative within the general culture and media, by service professionals and by consumers and their families?
6. What federal and state policy shifts have occurred over the last 20 years in the use or definition of the term “mental retardation” in each of the following contexts? To what extent have Congress and the states permitted or mandated the use of other terms to describe the same population or characteristics in these contexts?
  - Citizenship (including civil rights and liberties) and legal status
  - Civil and criminal justice
  - Early care and education
  - Training and employment
  - Income support
  - Health care
  - Housing and zoning

In completing this work, staff of the KU Policy Center undertook five primary activity/tasks:

1. Develop a detailed research bibliography based on a review of current research literature;

2. Review each of the documents identified in the research bibliography and analyze;
3. Prepare a written summary of research information by topic;
4. Prepare a *Final Project Report*; and
5. Assist in the presentation and dissemination of project information.

The approach that was to be taken by KU Policy Center staff to carry out each of these activity/tasks is described in detail below.

### **Activity/Task #1 - Develop a Research Bibliography**

During Project Months 1 and 2, KU Policy Center staff developed a detailed research bibliography based on a review of the current research literature related to each of the six research questions listed above.

Table 1 (below) shows a preliminary identification of possible research sources for each of these questions.

**Table 1 Research Questions and Potential Sources**

1. How is the term “mental retardation” currently defined in diagnostic manuals, research reports and textbooks and by national data-gathering entities?	Journals and textbooks related to mental retardation and special education.
2. To what extent is a diagnosis of “mental retardation” currently used to determine the eligibility of individuals for child or adult services? What <u>other terms</u> are currently used in such manuals, reports and textbooks and by national data-gathering entities to identify the same population or to “diagnose” or identify the same characteristics?	Federal and state laws, regulations, policies.
3. Over the last decade, what are the trends in the use (including diagnosis) of the term “mental retardation”? What are the explanations for any changes that have occurred?	Trend data provided by CDC, ED Annual Report to Congress, Annual Reports from the Mental Retardation Research Centers funded by NICHD, and published research.
4. How does the current use of the term “mental retardation” in the United States compare with the terminology used in other countries and by international organizations to describe the same population and characteristics?	Such as the United Nations, the WHO and the International Association for the Scientific Study of Intellectual Disabilities.

5. How and to what extent is the label “mentally retarded” viewed as pejorative within the general culture and media, by service professionals and by consumers and their families?	Anecdotal information, position and/or policy statements, and legal trends.
6. What federal and state policy shifts have occurred over the last 20 years in the use (e.g., required collection of information) or definition of the term “mental retardation” in each of the following contexts? To what extent have Congress and the states permitted or mandated the use of <u>other terms</u> to describe the same population or characteristics in these contexts?	The legislative history of the term in the context of Federal and state laws, regulations, policy statements.
<ul style="list-style-type: none"> <li>• Citizenship (including civil rights and liberties) and legal status</li> </ul>	
<ul style="list-style-type: none"> <li>• Civil and criminal justice</li> </ul>	
<ul style="list-style-type: none"> <li>• Early care and education (elementary, secondary, higher and adult)</li> </ul>	
<ul style="list-style-type: none"> <li>• Training and employment</li> </ul>	
<ul style="list-style-type: none"> <li>• Income support</li> </ul>	
<ul style="list-style-type: none"> <li>• Health care and nutrition</li> <li>• Housing and zoning</li> </ul>	

### Activity/Task #2 - Literature Review

KU Policy Center staff reviewed each of the documents identified in the research bibliography developed during Activity/Task #1. In connection with this process, project staff added additional research documents identified during this review. Each of the research documents reviewed by project staff was analyzed in terms of its relevance, probative value and reliability with respect to any of nine discrete research topics:

1. The current definition of the term “mental retardation” (or of another term to identify the same population or to identify the same characteristics) in:
  - Diagnostic manuals
  - Research reports and articles
  - Textbooks
  - Surveys or interviews conducted by national data-gathering entities
2. The definition of the term “mental retardation” (or of another term to identify the same

population or to identify the same characteristics) over the last decade in:

- Diagnostic manuals
  - Research reports and articles
  - Textbooks
  - Surveys or interviews conducted by national data-gathering entities
3. The current use of a diagnosis of “mental retardation” to determine the eligibility of individuals for child or adult services;
4. The use (including in relationship to both prognosis and diagnosis) of the term “mental retardation” over the last decade in:
- Determining eligibility for child or adult services
  - Diagnostic manuals
  - Research reports and articles
  - Textbooks
  - Surveys or interviews conducted by national data-gathering entities?
5. Factors that appear to have influenced changes in the use or definition of the term “mental retardation” over the last decade;
6. The use of the term “mental retardation” (or of another term) in other countries and by international organizations to describe the same population and/or characteristics;
7. The view of the label “mentally retarded” within the general culture and media, by service professionals and by consumers and their families;
8. Shifts over the last 20 years in the use or definition of the term “mental retardation” in federal and state policy related to:
- Citizenship (including civil rights and liberties) and legal status
  - Civil and criminal justice
  - Early care and education

- Training and employment
  - Income support
  - Health care
  - Housing and zoning
9. Other terms used to describe the same population or characteristics that have been permitted or mandated by Congress or the states in the context of:
- Citizenship (including civil rights and liberties) and legal status
  - Civil and criminal justice
  - Early care and education
  - Training and employment
  - Income support
  - Health care
  - Housing and zoning.

### **Activity/Task #3 - Research Summaries**

KU Policy Center staff prepared a written summary of research information collected during Activity/Task #2 for each of the nine identified research topics, merging the six research questions into five research summaries.

### **Activity/Task #4 - Final Project Report**

KUCDD and KU Policy Center staff then prepared a draft written project report which specifically addressed each of the six core research questions identified earlier. In order to prepare this report, KU Policy Center staff synthesized the information reported in the research summaries prepared during Activity/Task #3 in order to answer four specific policy research questions:

1. What are the trends over the last decade (generally and in textbooks and research articles) in the use (including in relationship to both prognosis and diagnosis) and definition of the term “mental retardation”?

2. How does the current use of the term “mental retardation” in the United States compare with the terminology used in other countries and by international organizations to describe the same population and characteristics?
3. How and to what extent is the label “mentally retarded” viewed as pejorative within the general culture and media, by service professionals and by consumers and their families?
4. To what extent do changes in the use or definition of the term “mental retardation” (including the use of other terms) represent federal and state policy shifts?

The Project Director was responsible for the successful and timely completion of this activity/task.

#### **Activity/Task #5 - Presentation and Dissemination of Project Information**

Throughout the project period, KU Policy Center staff provided assistance to the Consortium on Language, Image and Public Education in the presentation and dissemination of project information. During Project Month 11, KU Policy Center staff provided support to the American Association on Mental Retardation (AAMR) in connection with the publication of findings of this research on behalf of the Consortium. The Project Director was responsible for the successful and timely completion of this activity/task.

**III. What are the trends over the past decade in textbooks and research articles in the use (including in relationship to both prognosis and diagnosis) and definition of the term "mental retardation"?**

Research Summary A (see Appendix) gives an in-depth review of the items in the Research Bibliography. The conclusions are as follows: The term “mental retardation” in the U.S. has four current definitions and one proposed definition. The ICD-10 [International Classification of Diseases - tenth edition] (WHO [World Health Organization], 1992) and DSM-IV (Diagnostic and Statistical Manual of Mental Disorders - fourth edition) (APA [American Psychiatric Association], 1994) use essentially the same definition of mental retardation. The American Psychological Association uses a slightly different definition. The 1992 AAMR (American Association on Mental Retardation) definition of “mental retardation” is very different from the APA (DSM-IV) definition. Marc Gold has authored an alternative definition of “mental retardation” (Gold, M. W., 1980); and Greenspan proposes a different definition to the above (Greenspan, 1997), both of which have rarely been used.

Current alternative terms used are “mental deficiency”, “mental disability/handicap [mentally disabled, mentally handicapped]”; “organic mental disorder”; “intellectual disability [intellectually disabled, intellectually impaired]”. “Developmental disability or delay” is an over-inclusive term for “mental retardation.” “Retarded [retardation]” is a synonym of “mentally retarded [mental retardation].” Two sub-categories of “mental retardation” are “familial [cultural-familial, psycho-social] mental retardation” and “organic mental retardation”. Less frequently used terms are “intellectually challenged”, “mental disability”, “mental deficiency”, “mental subnormality”, and “lower extreme.” The educational terms “educable” and “trainable” are used to refer to different levels of “mental retardation”. Other terms used to refer to levels of “mental retardation” are “dependent retarded” and “life support needed.”

The clearest trends in textbooks, professional journals, and other publications follow the definitions of mental retardation and use of alternative terms of the time. As the DSM and ICD, American Psychological Association, and AAMR (previously AAMD [American Association on Mental Deficiency]) definitions changed, so did much of the literature. These three have been the

most cited and changes due to criticism, public opinion, professional opinion, and law have occurred.

Few changes have occurred during the last 10 years, however. For example, the most recent DSM publication (DSM-IV-TR) does not change the definition of “mental retardation.”

Comment: It is clear that there has not been a uniform usage of terminology in scholarly publications related to mental retardation over the past 25 years. Most treatises on intelligence do not use the AAMR definition, and often they do not define mental retardation at all. With a few exceptions, most test manuals on intelligence also do not explicitly define mental retardation. Government reports usually do not define mental retardation unless that is the specific topic being treated.

Nevertheless, there is a great deal of consistency on the use of terms in textbooks, research articles and other scholarly works devoted to the topic of mental retardation and related disabilities in the U.S. For instance, since the mid 1980s when the AAMD changed its name to AAMR, the use of the term "mental deficiency" has virtually disappeared from the literature in the U. S. The terms “disability, developmental disability, mental retardation, organic vs. familial," "Down Syndrome" are rarely used as interchangeable. Their degree of inclusiveness is widely understood. "Developmental delay" is largely reserved for infants and young children at risk for mental retardation where the diagnosis of mental retardation is not yet clear or confirmed yet. This is likely due to its usage in the IDEA, 1997 law governing Part C (birth-three) programs.

An interesting question is whether the new definition of mental retardation by AAMR in 1992 changed usage in the literature. A review of the Research Bibliography of entries between 1992-1997 and 1997-2002 shows an interesting trend. While 30% adopted the new definition and 8% kept the old definition from 1992-1997, 52% adopted the new definition and no one adopted the old one from 1997-2002. Usage of the AAMR definition was 10 times the frequency of use of any of the other definitions of mental retardation or of equivalent term. The next most frequently used term was "intellectual disability"(8% from 1992-1997 and 16% from 1997-2002).

Nearly all of the above usages of the term "mental retardation" in the above citations were for purposes of diagnosis and not prognosis. As MacMillan, et al. (1996) have pointed out, the primary use of the definition of mental retardation is for entitlement to funding rather than for prescriptive programming. The

intentions in crafting the 1992 definition by AAMR were to emphasize supports needed and prescriptive programming. An air of optimism in the manual set the occasion for striving for improvement in outcomes for people with mental retardation. This optimism is not reflected in the literature reviewed here. Probably the most optimism in prognosis comes from genetic and neurobiological research on gene therapy, organ repair by stem cells, and recovery of brain function due to its neuroplasticity. Such research reinforces the need for intensive early intervention services, which is likely to be an important trend in the future.

#### **IV. How does the term "mental retardation" in the U.S. compare with the terminology in other countries and by international organizations to describe the same population and characteristics?**

Research Summary B. (see Appendix) gives the terminology usage from official documents available from foreign countries and from international organizations. In viewing these terms, it is important that several points be noted:

1. We have focused on Europe, the British Commonwealth countries, and North and South America. There are many countries where laws and customs pertaining to mental retardation are not readily available, e.g. Middle Eastern and Asian countries. Some may have no official policies related to mental retardation. In other countries, e.g. countries of the former Soviet Union, they may be in transition from the traditional Soviet defectology approach to a more western view and may be in the process of changing their terminology. Inspection of the terminology used at the United Nations suggests that some countries still adhere to old terminology long abandoned in the U.S. Therefore, they would really not be comparable to the U. S.
2. Even though different countries may use the same terminology as the U.S., that does not necessarily mean that the underlying values and ideology are the same. These differences in societies need to be taken into account when interpreting their terminology. For instance, countries using the most frequently cited definition internationally, i.e. the WHO ICD-10 definition, also adopt more specific meanings of the terms "limitation", "impairment", "disability", and "handicap", whereas these terms are used more indiscriminately in the Western Hemisphere.
3. Many countries use terms that are not fully translatable into English. For instance, in Latin American countries, two terms frequently used are "menos validos" and "discapacidados", which could be translated "less able" and "disabled", but they mean more than that. They are pejorative rather than neutral terms.

With these caveats in mind, the most frequently used terminology and definition internationally is that of the WHO. Another very influential international organization is the International Association for the Scientific Study of Intellectual Disability who have adopted the term used in British Commonwealth countries, i.e. "intellectual disability". This term is equivalent to the term "mental retardation" in the U. S.

**V. How and to what extent is the label "mentally retarded" viewed as pejorative within the general culture and media, by service professionals and by consumers and their families?**

Research Summary C (see Appendix) addresses this question. Based on the writings in the Research Bibliography, the term "mental retardation" was viewed negatively by those authors who discussed the topic. This may be a very biased sample. However, the criticism comes from several quarters (Warren, 2000):

1. The inclusion movement in U.S. society has promoted advocacy and self-determination by people with disabilities. The more people are included in society, the less relevant labeling them becomes. By the same token, advocates find labels that stigmatize them and segregate them degrading and objectionable.
2. Many parents reject the term and prefer the term "learning disability". In the State of California, this view has led to a 200% increase in the number of diagnoses of learning disabilities and a decrease in the diagnosis of mental retardation in the schools in recent years (MacMillan, et al., 1996). In some school systems the term is banned entirely.
3. The term "mental retardation" is increasingly being superceded by more precise diagnoses such as Down Syndrome, Fragile X Syndrome, etc. There are now over 700 known genetic syndromes with the accompanying condition of mental retardation; and, with the completion of the Genome Project, many more can be expected in the near future. Still, there are many people with mental retardation whose causes are unknown.

It still may be alleged that the number who object to the term, although significant, may be a biased sample of the total population of over four million people who are estimated to have mental retardation in the U. S. (National Center for Health Statistics, 1994). There never has been an epidemiologically designed survey of attitudes toward the term "mental retardation". There has been one survey of 1964 parents, family members, self advocates, clinicians, and other professionals conducted by the Task Force on Language of the AAMR in 1999, a synopsis of which is in the Appendix (C). Although this is not a random sample, it still contains much interesting information. In general, it bears out the results of our research summary. The majority of people do not like the term because of its stigmatizing quality. Their major concerns in changing it might be the loss to

entitlements they now have and might lose if all of the legislative battles of the past 40 years had to be repeated to change the laws. In some cases, e.g. the death penalty in some states, this could be a life-and-death matter.

Finally, in one of the recent issues of *Mental Retardation* (Taylor, 2002), an AAMR journal, the editor, Steven Taylor, held a symposium entitled "What's in a Name?" which features the opinions of a dozen leaders in the field of mental retardation. Nearly all of them were in favor of changing the term "mental retardation", although many have the cautions we previously discussed. One of the most interesting was by Wolfensberger (2002), a pioneer in the field, in which he pleaded for sanity in the language wars. The ending of his opinion is a fitting ending to this chapter:

"Most people who `have' the condition that for about 50 years we have termed `mental retardation', and some of their allies, will never be satisfied with any designating term for them whatsoever, even though some designation is necessary in many situations in order for the state, condition or class at issue to be appropriately communicated about. If one is trying to find a term that would meet my 10 criteria that will finally satisfy those to whom it will be applied, one may as well give up this quest as futile, because there is no such term, and there never will be."(p 80).

**VI. To what extent do changes in the use or definition of the term "mental retardation" (including the use of other terms) represent federal and state policy shifts?**

In-depth analysis of this question can be found in Research Summary D on Determination of Program Eligibility, in Research Summary E on Aspects of Citizenship, Legal Status, and Criminal Justice, and in Notes 1-5 on Selected Topics (see Appendix). Each of these sources contains a wealth of information, which analyzes the laws state by state.

With respect to determination of programs eligibility of individuals for benefits and/or services under important Federal and State child or adult service programs, project staff sought to answer three important policy research questions:

1. To what extent is a diagnosis of “mental retardation” currently used?
2. To what extent has the use of alternative terms for determining eligibility been permitted or mandated?
3. Over the last two decades, what policy shifts have occurred in the use and definition of these terms, and what factors appear to have influenced these shifts?

Project staff investigated the eligibility services of persons with “mental retardation” for benefits and/or services under the following programs: (1) education programs funded under the IDEA; (2) training programs funded under the Workforce Investment Act, including the Vocational Rehabilitation program; (3) the SSI and DI cash assistance programs operated by SSA; (4) the Medicaid HCBS Waiver program operated by DHHS; (5) State special education programs; and (6) State general assistance programs.

1. With respect to the first policy research question being investigated:
  - a. Within the Federal programs reviewed, a diagnosis of *mental retardation* is currently used to determine under the IDEA, SSI, SSDI and Medicaid HCBS Waiver programs. A diagnosis of “mental retardation” is currently used by approximately half of the States in determining eligibility for special education

programs including programs receiving IDEA financial support. Such a diagnosis is used in only one state to determine eligibility for general assistance.

- b. The same definition of “mental retardation” is currently used to determine eligibility under the SSI, SSDI and Medicaid HCBS Waiver programs. A different definition is used under the IDEA program. Of the 26 States that have elected to use a diagnosis of *mental retardation* for purposes of State special education programs, 15 have elected to use the IDEA 97 definition. Most of the remaining states have used a very similar definition but 4 have adopted a significantly different definition.
2. With respect to the second policy research question investigated:
    - a. The use of *alternative terms* for determining eligibility has not been mandated within any of the Federal or State programs studied but has been permitted within the operation of State special education programs receiving IDEA financial support.
    - b. For the purposes of determining eligibility for State special education programs, 25 states have adopted an *alternative term*. The most popular alternative term has been *mental disability* (32%) but there is no clear cut consensus.
    - c. Of the States that have adopted an *alternative term* for determining eligibility for State special education, 7 have used the IDEA 97 regulatory definition of “mental retardation” and only 2 of the remaining states appear to have used definitions that differ significantly from that IDEA definition.
    - d. Currently, 36 states have adopted the term “developmentally delayed” as a new special education eligibility category, an option created by the IDEA 97 legislation.
  3. With respect to the third policy research question investigated:

- a. Within the Federal programs studied, the only discernible policy shift over the last two decades in the use of the term *mental retardation* and of *alternative terms* , has been the addition within IDEA 97 of the eligibility category of *developmentally delayed*.
- b. Within the operation of State special education programs, there has been a discernible shift over the last two decades away from the use of the term “mental retardation” but there is no clear pattern as to which alternative term appears preferable.
- c. Opposition on the part of both parent/advocates and some professionals to the use of the term “mental retardation” appears to have influenced both of these shifts.

Comment: There is no uniformity in the use of the definition or the use of the term in the determining of eligibility across federal or state agencies. A diagnosis of mental retardation is used in about half of the states to determine eligibility under the IDEA, SSI, SSDI and Medicaid HCBS Waiver programs. Other states may use different criteria and definitions. IDEA Part C uses a definition of developmental delay. The SSI program for children uses a very different definition of mental retardation as well as another term called "developmental and emotional disorders of newborn and younger infants." The adult SSI program also uses yet another definition of mental retardation and another term called "organic mental disorder." This causes a great deal of stress on families who try to access these programs. A great deal of effort by state agencies and parent organizations, such as Parent-to-Parent and Parents in Policy-Making, is devoted to helping parents in learning how to negotiate the labyrinth of entitlement services.

With respect to citizenship, legal status, and criminal justice, project staff addressed the use of a diagnosis of “mental retardation” or of an alternative term to determine six important aspects of citizenship, legal status and criminal justice. Specifically, with respect to each of these aspects of citizenship, legal status and criminal justice, it sought to answer two important policy research questions:

1. To what extent is a diagnosis of “*mental retardation*” currently used?

2. To what extent has the use of *alternative terms* for determining eligibility been permitted or mandated?

As identified in the Final Research Bibliography, these *alternative terms* are

1. *Mental deficiency*
2. *Mental disability or handicap*
3. *Intellectual disability or impairment*
4. *Organic mental disorder*; and
5. *Developmental disability or delay*.

Project staff explored the use of a diagnosis of “mental retardation” (or of an alternative term) in connection with six important aspects of citizenship, legal status and criminal justice. As identified in the Final Research Bibliography, these aspects are:

1. Immigration status and eligibility for citizenship
2. Eligibility for voting in federal elections and military service;
3. Federal non-discrimination and equal opportunity protections;
4. Involuntary termination of parental rights under state law;
5. Legal competence or capacity under state law; and
6. Criminal responsibility, competence to stand trial and sentencing.

U.S. immigration and naturalization laws classify persons with certain physical or mental disorders as ineligible for visas or for other admission to the United States. However, the exclusion of a person with “*mental retardation*” may be waived based in part on a medical report that includes details of any hospitalization or institutional care or treatment and a report of a psychiatric examination conducted by a psychiatrist that also provides an evaluation of intelligence. With respect to naturalization (citizenship), applicants with a “permanent physical or *developmental disability* or mental impairment may be exempted from general requirements that all applicants must be able to speak, read, write, and understand basic English and be

able to demonstrate knowledge and understanding of the fundamentals of U.S. history and principles of government.

None of the three Federal laws that bear (or might bear) directly on the eligibility of persons with disabilities to vote in Federal elections makes use either of the term *mental retardation* or of any of the *alternative terms*. While eligibility for enlistment in the armed services is not expressly precluded for persons with *mental retardation*, it is dependent in part on scores achieved on the Armed Forces Qualification Test. While neither the Americans with Disabilities Act nor the Rehabilitation Act of 1973 specifically refers to persons with *mental retardation* (or uses any of the *alternative terms*), Federal regulations implementing both laws define the term “physical or mental impairment” to include *mental retardation*. The Civil Rights of Institutionalized Persons Act protects institutionalized persons with psychiatric or *developmental disabilities*. Regulations implementing the Fair Housing Act defined a “mental or physical impairment” to expressly include *mental retardation*.

In four states, standards governing the involuntary termination of parental rights use a diagnosis of “*mental retardation*” as a basis for such a decision. Two states use a diagnosis of *developmental disability* and twenty-two states use a diagnosis of *mental deficiency* as grounds for the termination of parental rights. State have also established standards for the appointment of guardians and conservators for persons who are determined to be legally incompetent or to lack legal capacity (i.e., adult status). In determining legal competency and capacity leading to the appointment of guardians and conservators, state laws have established classification structures that include diagnoses of *mental retardation* (20 states), *mental deficiency* (20 states), and *developmental disability* (14 states). Finally, many states also have established criteria for determining criminal responsibility, competence to stand trial and sentencing that in part rely on a diagnosis of *mental retardation* (14 states) or of an *alternative term* (e.g., *mental deficiency*).

Comment: while federal laws uniformly govern immigration status and eligibility for citizenship, voting, military service, non-discrimination and equal opportunity protections, there is considerable variability among the states in their laws concerning termination of parental rights, legal competence, criminal responsibility, and

competence to stand trial and sentencing. These issues have come to the forefront in recent years because of recent Supreme Court decisions regarding execution of people with mental retardation, e.g. the Penry decision. There is currently a growing movement to abolish execution of people with mental retardation (see Edwards, 2002 for an excellent review). The legal definition of mental retardation in a particular state is crucial to these issues and lack of uniformity among states is problematic.

VII. Appendix

- A. Research Summaries
- B. Notes on Selected Topics
  - 1. Special Education Laws and Regulations
  - 2. General Assistance Laws and Regulations
  - 3. Involuntary Termination of Parental Rights
  - 4. Legal Competence and Capacity
  - 5. Criminal Responsibility and Competence
- C. Task Force on Language 1999 Opinion Survey

## **RESEARCH SUMMARIES**

## Research Summary: A

### How is the term “mental retardation” currently defined? What alternative terms are currently used?

#### What have been the trends over the last decade and which factors influenced such changes?

This Research Summary addresses the first primary area of policy research concerning the current definition of the term “mental retardation” in diagnostic manuals, textbooks, professional journals and other publications (including governmental reports and surveys); and what alternative terms are currently used to identify the same population or to “diagnose” or identify the same characteristics.

- Mental deficiency
- Mental disability or mental handicap
- Intellectual disability
- Organic mental disorder
- Developmental disability or delay

What have been the trends over the last decade in the use (including in relationship to both prognosis and diagnosis) and the definition of the term “mental retardation”; and which factors appear to have influenced changes in the use or definition of the term “mental retardation?”

#### A. Conclusions

The term “mental retardation” has four current definitions and one proposed definition. The ICD-10 [International Classification of Diseases - tenth edition] (WHO [World Health Organization], 1992) and DSM-IV (Diagnostic and Statistical Manual of Mental Disorders - fourth edition) (APA [American Psychiatric Association], 1994) use the same definition of mental retardation. The American Psychological Association uses a slightly different definition. The 1992 AAMR (American Association on Mental Retardation) definition of “mental retardation” is slightly different from the APA (DSM-IV) definition. Marc Gold has authored an alternative definition of “mental retardation” (Gold, M. W., 1980); and Greenspan proposes a different definition to the above (Greenspan, 1997).

Current alternative terms used are “mental deficiency”, “mental disability/handicap [mentally disabled, mentally handicapped]”; “organic mental disorder”; “intellectual disability [intellectually disabled, intellectually impaired]”.

“Developmental disability or delay” is an over-inclusive term of “mental retardation.” “Retarded [retardation]” is a synonym of “mentally retarded [mental retardation].” Two sub-categories of “mental retardation” are “familial [cultural-familial, psycho-social] mental retardation” and “organic mental retardation”. Less frequently used terms are “intellectually challenged”, “mental disability”, “mental deficiency”, “mental subnormality”, and “lower extreme.” The educational terms “educable” and “trainable” are used to refer to different levels of “mental retardation”. Other terms used to refer to levels of “mental retardation” are “dependent retarded” and “life support.”

The clearest trend is textbooks, professional journals, and other publications follow the definitions of mental retardation and use of alternative terms at the time. As the DSM and ICD, American Psychological Association, and AAMR (previously AAMD [American Association on Mental Deficiency]) definitions changed, so did much of the literature. These three have been the most cited and changes due to criticism, public opinion, professional opinion, and law have occurred. Few changes have occurred during the last 10 years, however. For example, the most recent DSM publication (DSM-IV-TR) does not change the definition of “mental retardation.”

### How is the term “mental retardation” currently defined?

#### Current Definitions of Mental Retardation:

According to the Manual of Diagnosis and Professional Practice in Mental Retardation (APA, 1996):

“Mental retardation (MR) refers to (a) significant limitations in general intellectual functioning; (b) significant limitations in adaptive functioning, which exist concurrently; and ( c ) onset of intellectual and adaptive limitations before the age of 22 years.” (p. 13).

The ICD-10 (WHO 1992) and DSM-IV (APA, 1994) use the same definition of mental retardation.

According to the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition:

Diagnostic criteria for Mental Retardation

- A. Significantly subaverage intellectual functioning: an IQ of approximately 70 or below on an individually administered IQ test (for infants, a clinical judgement of significantly subaverage intellectual functioning).
- B. Concurrent deficits or impairments in present adaptive functioning (i.e., the person’s effectiveness in meeting the standards expected for his or her age by his or her cultural group) in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self direction, functional academic skills, work, leisure, health and safety.
- C. The onset is before age 18 years.

*Code* based on degree of severity reflecting level of intellectual impairment:

- 317 Mild Mental Retardation: IQ level 50-55 to approximately 70
- 318.0 Moderate Mental Retardation: IQ level 35-40 to 50-55
- 318.1 Severe Mental Retardation: IQ level 20-25 to 35-40
- 318.2 Profound Mental Retardation: IQ level below 20 or 25
- 319 Mental Retardation, Severity Unspecified: when there is strong presumption of Mental Retardation but the person’s intelligence is untestable by standard tests. (64)

The most recent definitions endorsed by AAMR and the American Psychiatric Association (DSM-IV) have recently been published (APA, 1994; Luckasson et al., 1992). The 1992 AAMR definition of mental retardation reads:

*Mental retardation* refers to substantial limitations in present functioning. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental retardation manifests before age 18. (Luckasson et al., 1992, p. 1)

According to “Did I Say That?” Articles and Commentary on the Try Another Way System:

#### **Alternative definition**

“Mental retardation refers to a level of functioning which requires from society significantly above average training procedures and superior assets in adaptive behavior on the part of society, manifested throughout the life of both society and the individual.”(p. 148)

“The mentally retarded person is characterized by the level of power needed in the training process required for her to learn, and not by limitations in what she can learn...The height of a retarded person’s level of functioning is determined by the availability of training technology and the amount of resources society is willing to allocate and not by significant limitations in biological potential...” (p.148)

#### **Greenspan’s Definition** (Greenspan, 1997)

Greenspan’s proposed definition is as follows:

“Persons who are MR [mentally retarded] are widely perceived to need long-term supports, accommodations or protections due to persistent limitations in social, practical and conceptual intelligence and the resulting inability to meet intellectual demands of a range of settings and roles. These limitations are assumed in most cases to result from abnormalities or events occurring during the developmental period, and which have permanent effects on Brain development and functioning. (p. 186)”

## What alternative terms are currently used?

### Alternative Terms

#### Mental deficiency

*Mental deficiency* is used for this purpose: “**mental deficiency** (1) mental retardation; (2) sometimes used to distinguish the group of persons having demonstrable organic basis for their intellectual deficits. (*See also* mental retardation)” (Grossman, 1983, p. 183).

*Mental deficiency* is used for this purpose: “**mental deficiency** *See mental retardation*; sometimes used to distinguish the group of persons having demonstrable organic basis for their intellectual deficits” (Grossman, 1977, p. 148).

*Mental deficiency* is used to refer to the same population (Wechsler, 1991).

*Mentally deficient* is used to refer to the same population (Bayley, 1993).

*Mental deficiency* is used for this purpose: “...terms such as *mental deficiency* and *mental subnormality* have also been used” (Bierne-Smith, Ittenbach & Patton, 2001, p. 44).

*Mentally deficient* is used to refer to AAMD (American Association on Mental Deficiency) (Sparrow, 1984).

#### Mental disability/handicap [mentally disabled, mentally handicapped]

*Mentally handicapped* (M/H) is used as a synonym of mental retardation (Slosson, 1996).

#### Intellectual disability [intellectually disabled, intellectually impaired]

This term is used.

#### Organic mental disorder

*Organic mental disorder* is used to describe a subset of those with *mental retardation*. It is based on the etiology of the disorder. “The various causes of organic damage include chromosomal abnormalities, metabolic imbalances, neurological insults, congenital defects, perinatal complications, and infections” (Hodapp, Burack & Zigler, 1990, p. 40).

The term *nonorganic (cultural-familial) retardation* is used to describe a subset of those with *mental retardation*. It is based on the etiology of the disorder. “As seen in the earlier review of the two-group approach, past researchers have suggested various causes of nonorganic retardation, including familial, genetic, social, environmental, undiscovered organic defects, and any number of combinations of these factors. Accordingly, these researchers have employed a variety of terms to describe the etiology of this type of retardation (e.g., unknown, cultural-familial, familial, and sociocultural)” (Hodapp, Burack & Zigler, 1990, p. 39).

*Organic mental retardation* and *familial mental retardation* are used to describe two different forms of *mental retardation*: “Within mentally retarded samples, children with organic forms of mental retardation (children who’s mental retardation may be attributed to some biological or physiological factor) have been distinguished from familial retarded children (children with no known organic impairment who typically come from lower socioeconomic classes and have family members who are similarly retarded)” (Burack, Hodapp and Zigler, 1998, p. 447).

“Those people with mental retardation whose condition can be traced to some organic perturbation, such as an inborn error of metabolism, are considered to have structural limitations. This leads to the well-known dichotomous expression of mental retardation as brain-damaged versus sociocultural, organic versus nonorganic, endogenous versus exogenous and so on” (Ellis, 1997, p. 25-26).

#### Educable terms used:

*educable* refers roughly to *mild mental retardation*.

*trainable* refers roughly to *moderate mental retardation*.

#### Other terms used instead of mental retardation:

“...the severe group includes individuals sometimes known as “dependent retarded;” individuals in the profound retardation level are among those sometimes called “life support” level.” (Grossman, 1977, p. 19).

- *Retardation* is used as a synonym of *mental retardation* (Grossman, 1977, p. 19).
- The term *retardation / retarded* is used as a synonym of *mental retardation / mentally retarded* (Baroff, 1986).
- *Retardation* is used as a synonym of *mental retardation* (Matson & Breuning, 1983).
- *Retardation* is used as a synonym of *mental retardation* (Hodapp, Burack & Zigler, 1990)
- *Retarded* is used as a synonym of *mentally retarded* (Bierne-Smith, Ittenbach & Patton, 2001).
- *Retardation* is used as a synonym of *mental retardation* (Taylor, 1997, p. 7).
- *Retardation* is used as a synonym of *mental retardation* (Burack, Hodapp and Zigler, 1998).
- *Retarded* is used as a synonym of *mentally retarded* (President's Committee On Mental Retardation, 1993).
- *Retarded* youngsters is used as a synonym of *mentally retarded* (Kaufman & Kaufman, 1983, p. 11).

“Some professionals like the terms intellectually challenged or mental disability” (Bierne-Smith, Ittenbach & Patton, 2001, p. 44).

“...terms such as *mental deficiency* and *mental subnormality* have also been used” (Bierne-Smith, Ittenbach & Patton, 2001, p. 44).

*Deficient* is used instead of *mental retardation* (Wilkinson, 1984, p. 29).

*Lower extreme* is used instead of *mentally retarded* (Kaufman & Kaufman, 1985, p. 69).

### **What have been the trends over the last decade?**

#### **Which factors seem to have influenced such changes?**

According to Mental Retardation: Definition, Classification, and Systems of Supports, 9<sup>th</sup> Edition:

“The 1992 AAMR Definition, Classification, and Systems of Supports represents a significant departure from the previous system in that: (a) a single diagnostic code of mental retardation is used if the person meets the three criteria of age of onset, significantly subaverage abilities in intellectual functioning, and limitations in two or more adaptive skill areas; (b) the person's strengths and weaknesses are described in reference to psychological, physical, and environmental dimensions; and (c) a profile is developed of needed supports across the four dimensions of intellectual functioning and adaptive skills (Dimension I), psychological and emotional considerations (Dimension II), physical/health/etiology considerations (Dimension III), and environmental considerations (Dimension IV).” (pp. 24-25)

The 1992 AAMR definition change from its earlier version: “...The use of a single diagnostic code of mental retardation removes the previous, largely IQ-based labels of mild, moderate, severe, and profound. The person either is diagnosed as having or not having mental retardation based upon meeting the three criteria of age of onset and significantly subaverage abilities in intellectual functioning and two or more adaptive skill areas.” (p. 34)

According to Grossman et al., (1993) Classification in Mental Retardation:

“Mental retardation refers to significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.”

**Note.** Levels of retardation are identified with the same terms as those used in previous AAMD manuals. The IQ ranges for levels are generally consistent with those suggested by the American Psychiatric Association in their *Diagnostic and Statistical Manual III*, but a narrow band at each end of each level was used to indicate that clinical judgement about all information, including the IQ's, and more than one test, the information about intellectual functioning obtained from other sources, etc., is necessary in determining level. Thus, someone whose Full Scale Wechsler IQ is 53 might be diagnosed as either mild or moderate, depending on other factors,

such as the relative difference in Performance and Verbal IQ or results of other tests. A psychometric explanation for the overlap in categories can be found in pages 56-57.”(p. 13)

According to the Manual on Terminology and Classification in Mental Retardation (Grossman et al., 1977 rev.): “The definition of mental retardation in this manual is slightly changed to reflect the deletion of the Borderline category. The definition used for the current manual is:

Mental Retardation refers to significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period.”

According to the Wechsler Adult Intelligence Scale - Third Edition:

**Diagnosing Mental Retardation**

“According to criteria specified in the *Diagnostic and Statistical Manual of Mental Disorders - Fourth Edition* (DSM-IV; American Psychiatric Association, 1994) and by the American Association on Mental Retardation (1992), an individual must demonstrate “general intellectual functioning significantly below average” (i.e., Full Scale IQ score < 70) and significant adaptive impairment in at least two of the following areas: communication, self care, home living, social/interpersonal skills, use of community resources, self direction, functional academic skills, work, leisure and health and safety. Very low performance on a test of general intellectual ability, such as the WAIS-III, is a necessary but not sufficient criterion for the diagnosis of mental retardation. The most accurate diagnosis derives from multiple data sources, including assessment of the individual’s functioning at home, in school, and in the community.” (pp. 7-8)

According to the Wechsler Intelligence Scale for Children - Third Edition: Manual:

**Diagnosing Mental Retardation**

“According to the definition set forth by the American Association on Mental Deficiency (Grossman, 1983), an individual, to be diagnosed as mentally retarded, must show evidence of below-average functioning both in his or her intellectual functioning and in his or her adaptive behavior in a variety of settings. Thus, significantly low performance on a measure of general intellectual ability, such as the WISC-III, is a necessary part of any diagnosis of mental deficiency, but is not sufficient in itself to establish the diagnosis. The most accurate diagnosis will emerge from the use of multiple sources of information and include information on how the child functions at home, in school, and in the community.” (p. 8)

According to the Woodcock-Johnson Psycho-Educational Battery - Revised:

**Diagnosis**

“The WJ-R may be used to determine and describe the present status of an individual’s cognitive abilities and achievement, such as the diagnosis or identification of specific weaknesses that may be interfering with related aspects of development... Furthermore, the WJ-R can be used to obtain an in-depth evaluation after an individual has failed a screening procedure (e.g., preschool screening). WJ-R results may also be used to confirm the results of other tests or evaluations regarding an individual.” (p. 6)

According to Mental Retardation: Nature, Cause, and Management:

**CURRENT AAMD DEFINITION OF MENTAL RETARDATION**

“The current AAMD definition of mental retardation is its 1983 version (Grossman, 1983) and it is identical to the 1977 revision (Grossman, 1977) except for slightly greater specificity with regard to one of its elements, the “developmental period.” The definition and its “commentary” is quoted from the 1983 manual and is followed by a detailed elaboration of each of its three components.” (p. 16)

**Definition**

“Mental retardation refers to significantly subaverage intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period” (Grossman, 1983). (p. 16)

Information from **TABLE 1:**

Level of retardation	Stanford-Binet and Cattell tests	Wechsler scales
Mild	52-67	55-69

Moderate	36-51	40-54
Severe	20-35	25-39
Profound	0-19	0-24

(p. 19)

According to Assessing the Mentally Retarded:

**Definition**

“The determination of mental retardation and its defining characteristics have evolved over the years, however, to include other dimensions in addition to intellectual functioning. For example, the American Association on Mental Deficiency (AAMD), in revised editions (Grossman, 1973, 1977), using terminology from a classification espoused earlier in Heber (1959), now defined mental retardation as “significantly subaverage intellectual functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period” (before the age of 18).” (p. 3)

According to Issues in the Development Approach to Mental Retardation:

**Definition**

“The current operational definition of mental retardation is significantly subaverage intellectual functioning, indicated by a score of 70 or below on a standardized test that results in or is associated with deficits or impairments in adaptive behavior, with onset before the age of 18 years (APA, 1980; Grossman, 1983).” (p. 28)

According to Assessment of Children 4<sup>th</sup> Edition:

Definition taken from:

“Table 2-1

Major Disorders Usually First Diagnosed in Infancy, Childhood, or Adolescence

Disorder	Description
Mental Retardation	Significantly subaverage intellectual functioning (an IQ of approximately 70 or below) with onset before age 18 years and concurrent deficits or impairments in adaptive functioning.

Source: Adapted from DSM-IV (American Psychiatric Association, 1994).” (p. 25)

“This text, unlike the WISC-III manual, uses the term *mental retardation* instead of the term *intellectual deficiency* to describe children who may be significantly below average in their intellectual ability. *Mental retardation* is the term used in DSM-IV and by the American Association on Mental Retardation. Consequently we believe that *mental retardation* is the preferred term for describing children who are functioning two or more standard deviations below the mean.” (p. 268)

According to Mental Retardation:

Information taken from:

Table 2.4

Chronology of Definitional Perspectives of Mental Retardation

Author	Definition
American Psychological Association (Jacobson & Mulick, 1996)	Mental retardation refers to (a) significant limitations in general intellectual functioning; (b) significant limitations in adaptive functioning, which exist concurrently; and ( c ) onset of intellectual and adaptive functioning before the age of 22 years.

(p. 61)

“Table 2.3

Degrees of Mental Retardation

Degree of Mental Retardation	IQ Score Range	IQ Deviation Cutting Point	Extent of Concurrent Adaptive Limitations
Mild	55-70	-2 SD	Two or more domains
Moderate	35-54	-3 SD	Two or more domains
Severe	20-34	-4 SD	All domains
Profound	Below 20	-5 SD	All domains

Note: IQ ranges approximate due to SE. Limitations in adaptive functioning are relative to expected performance by chronological age and require scores at 2 SD or lower for significance.

Source: From John J. Jacobson and James A. Mulick (Eds.), (1996). *Manual of Diagnosis and Professional Practice in Mental Retardation*, p. 14. Washington, DC: American Psychological Association. Reprinted by permission.” (p. 60)

According to Assessment of Individuals With Mental Retardation:

“1992 REVISION OF THE AAMR DEFINITION

‘Mental retardation refers to substantial limitations in present functioning. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental retardation manifests before age 18.’ (Luckasson et al., 1992, p. 1)” (p. 8)

“A second definition of mental retardation is provided by the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV)*. This definition is:

‘Significantly subaverage general intellectual functioning (Criterion A) that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academics, work, leisure, health and safety (Criterion B). The onset must occur before age 18 years (Criterion C). (American Psychiatric Association, 1994, p. 39).” (p. 36)

According to Developmental Disability and Behaviour:

“*mental retardation* refers to significantly sub-average cognitive functioning combined with impairment in adaptive behaviour.” (p. 28)

“Throughout this chapter, the U.K. term ‘learning disability’ is employed: this donates ‘mental retardation’ as defined by ICD-10 (WHO 1992) and DSM-IV (APA 1994), corresponding to IQ<70 presenting in the developmental period. ‘Learning disability’ is classified in the same manner as ‘mental retardation’, namely: mild, IQ 50-69; moderate, IQ 35-49; severe, IQ 20-34; profound, IQ <20.” (p. 12)

According to the Handbook of Mental Retardation and Development:

**Definition**

“There has been a tendency for clinicians to diagnose mental retardation only when an IQ below 70 is accompanied by social impairment or problems in social adaptation (Schalock et al., 1994). However that leaves open the need to resolve the important question of why there is variation in the extent to which low intelligence is accompanied by social deficits.” (p. 49)

According to Ellis’ Handbook of Mental Deficiency, Psychological theory and Research (3<sup>rd</sup> ed.):

**Definition**

“The most recent definitions endorsed by AAMR and the American Psychiatric Association (DSM-IV) have recently been published (APA, 1994; Luckasson, 1992). The 1992 AAMR definition of mental retardation reads:

*‘Mental retardation refers to substantial limitations in present functioning. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental retardation manifests before age 18.’*” (Luckasson, 1992, p. 1) (p. 63)

According to the Bayley Scales of Infant Development: Second Edition:

**Definition**

Mental retardation is not defined explicitly.

“The three scales on the BSID-II are as follows:

- The Mental Scale contains 178 items that measure recognition memory, habituation, visual preference, visual acuity skills, problem solving, number concepts, language and social development.
- The Motor Scale contains 111 items that measure quality of movement, sensory integration, motor planning, fine and gross motor skills, and perceptual-motor integration.
- The Behavior Rating Scale contains 30 items designed to obtain information about how the examiner views the child’s behavior (e.g., persistence, affect, cooperation, fine and gross motor movement, and frustration level).

The BSID-II is the best available measure for the assessment of infants...” (Sattler, 2001, p. 547-548).

According to the Comprehensive test of non-verbal Intelligence (CTONI):

**Definition**

Mental retardation is not explicitly defined.

CTONI “is an individually administered test of intelligence that contains six sub-tests designed to measure problem solving, reasoning, and abstract thinking abilities. The test is designed for individuals between the ages of 6 and 89 years...” (Sattler, 2001, p. 550).

“...Because the test has a limited floor for 6- and 7-year-olds, it cannot distinguish degrees of mental retardation at these age groups...” (Sattler, 2001, p. 552).

According to the Cognitive Assessment System:

**Definition**

Mental retardation is not explicitly defined.

CAS “is an individually administered test of cognitive ability designed for children between the ages of 5 and 17 years... The test is based on the PASS model... PASS is an acronym for four components - planning, attention, simultaneous processing, and successive processing - hypothesized to represent basic cognitive processing...” (Sattler, 2001, p. 548).

“Correlations between the CAS and WISC-III are .69 in a regular education sample, .66 in a sample of students with mental retardation, and .71 in a sample of children with learning disabilities. Correlations between the CAS and the Woodcock-Johnson-Revised range from .50 to .67 (*Mdn r* = .49) on the Standard Battery and from .44 to .64 (*Mdn r* = .46) on the Basic Battery... The performance of children in special groups (e.g., children with... mental retardation...) was similar to what would be expected...” (Sattler, 2001, p. 550).

According to the Kaufman Assessment Battery for Children (K-ABC):

**Definition**

Mental retardation is not explicitly defined.

K-ABC “...is an individually administered test of intelligence and achievement designed for children ages 2-6 to 12-5. The K-ABC has four scales: Sequential Processing, Simultaneous Processing, Achievement, and Nonverbal. The test takes about 45 minutes to administer to preschool children and about 75 minutes to administer to those of school age ” (Sattler, 2001, p. 557). “The limited range of standard scores at some ages makes it difficult to evaluate children with mental retardation...” (Sattler, 2001, p. 558).

According to Testing Young Children: A reference guide for developmental, psychoeducational and psychological Assessments:

**Definitions**

“The terms *developmental delay* and *mental retardation* are used interchangeably and, as such, frequently are confusing to parents and teachers. The American Association on Mental Deficiency (AAMD) defines mental retardation as ‘significantly subaverage intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period’ (Grossman, 1983, p. 11). There are four categories of mental retardation in this classification - mild, moderate, severe, and profound. The majority of the cases fall into the mild category, followed by moderate, severe, and profound.” (Sattler, 1988). (P, 168)

According to The Leiter International Performance Scale - Revised:

**Definition**

Mental retardation is not explicitly defined.

“The test is particularly useful for examinees who have little or no useful speech or who have limited motor coordination.” (Sattler, 2001, p. 561)

According to the Slosson Intelligence Test-Revised:

**Definition**

Mental retardation is not explicitly defined.

The test “is a screening test of verbal intelligence designed for individuals ages 4 to 18+ years. The SIT was originally published in 1963 and was renormed in 1981. The SIT-R was normed in 1991 and renormed in 1998.” (Sattler, 2001, p. 565).

“The SIT-R consists of 187 items that measure vocabulary, general information, concept formation, comprehension, quantitative ability, and auditory memory. All questions are presented verbally and require spoken responses. None of the questions are times, and the test takes between 10 and 30 minutes to administer.” (Sattler, 2001, p. 565)

“The SIT-R should not be used as a substitute for the Stanford-Binet: IV, WISC-III, WPPSI-R, or DAS, especially in assessing children with disabilities.” (Sattler, 2001, p. 566)

According to the Test of Nonverbal Intelligence-3 (TONI-3):

**Definition**

Mental retardation is not explicitly defined.

“The TONI-3 is designed to measure problem-solving and abstract reasoning abilities...[it] consists of Forms A and B, each comprising 5 training items and 45 abstract/figural problem-solving items arranged in increasing order of difficulty... Examinees answer by pointing to the best option... The TONI-3 covers ages 6 to 89 years and takes about 15 minutes to administer” (Sattler, 2001, p. 566).

“...The TONI-3 can differentiate individuals with mental retardation from those without mental retardation...” (Sattler, 2001, p. 567). “However, we do not recommend that the TONI-3 be used in place of the Wechsler tests, the Stanford-Binet Intelligence Scale: Fourth Edition, or the DAS, because it measures intelligence based on figural reasoning only.” (Sattler, 2001, p. 567)

According to The Twenty-second Annual Report to Congress on the Implementation of the Individuals with Disabilities Education Act:

**Definition**

The term “mental retardation” is not explicitly defined in this report.

“States and Outlying Areas report data on children in 13 disability categories: specific learning disabilities, speech or language impairments, mental retardation, emotional disturbance, multiple disabilities, hearing impairments, orthopedic impairments, other health impairments, visual impairments, autism, deaf-blindness, traumatic brain injury, and developmental delay.” (pp. 11-19)

According to The Forgotten Generation: 1999 Report to the President:

**Definition**

The term “mental retardation” is not explicitly defined in this report.

According to The Contributions of Americans with Mental Retardation to Our Nation’s Workforce: 1998 Report to the President:

**Definition**

The term “mental retardation” is not explicitly defined in this report.

According to Voices and Visions: Building Leadership for the 21<sup>st</sup> Century: 1996 Report to the President:

**Definition**

The term “mental retardation” is not explicitly defined in this report.

According to The National Effort to Prevent Mental Retardation and Related Developmental Disabilities: Report to the President:

**Definition**

The term “mental retardation” is not explicitly defined in this report.

According to the Diagnostic and Statistical Manual of Mental Disorders, Third Edition, Revised:

**Diagnostic criteria for Mental Retardation**

- A. Significantly subaverage intellectual functioning: an IQ of 70 or below on an individually administered IQ test (for infants, a clinical judgement of significantly subaverage intellectual functioning, since available intelligence tests do not yield IQ values).
- B. Concurrent deficits or impairments in adaptive functioning, i.e., the person’s effectiveness in meeting the standards expected for his or her age by his or her cultural group in areas such as social skills and responsibility, communication, daily living skills, personal independence, and self-sufficiency.
- C. Onset before the age of 18.” (pp. .31-32)

**Degrees of severity**

There are four degrees of severity, reflecting the degree of intellectual impairment: Mild, Moderate, Severe, and Profound. IQ levels to be used as guides in distinguishing the four degrees of severity are:

Degree of Severity	IQ
Mild	50-55 to approx. 70
Moderate	35-40 to 50-55
Severe	20-25 to 35-40
Profound	Below 20 or 25” (32)

“V40.00                      Borderline Intellectual Functioning  
 Note: This is coded on Axis II.

This category can be used then the focus of attention or treatment is associated with Borderline Intellectual Functioning, i.e., an IQ in the 71-84 range. Differential diagnosis between Borderline Intellectual Functioning and Mental Retardation (an IQ of 70 or below) is especially difficult and important when the coexistence of certain mental disorders is involved. For example, when the diagnosis is Schizophrenia, Undifferentiated or Residual Type, and impairment in adaptive functioning is prominent, the existence of Borderline Intellectual Functioning is easily overlooked, and hence the level and quality of potential adaptive functioning may be incorrectly assessed.” (pp. p359-360).

According to Slosson Intelligence Test SITR:

"The SIT-R can be given to certain handicapped individuals. If the examinee can hear reasonably well and can speak understandably, the SIT-R can be administered. During the field trials and standardization, the SIT-R was administered to... mentally handicapped..." (p. 9)

"The SIT-R [is used] to evaluate an individuals mental ability... It is designed to be an individual test for use in screening or estimating the cognitive ability of an individual, public school student, college student, mental patient or mentally handicapped person." (p. 1)

"The TSS [Total Standard Score] indicates the ability level of the subject in relation to others in the standardized sample. Some Guidelines for this level are as follows:

Slosson Classification Chart

TSS	Classification	School Accomplishment and Placement
148 - Above	Very Superior	Gifted programs, college, graduate work
132 - 147	Superior	Gifted classes, college, graduate work
120 - 131	High	Gifted classes, college, graduate work
110 - 119	Above average	High school, and college
90 - 109	Average	High school, Junior college
80 - 89	Below average	Slow learner classes
69 - 79	Borderline M/H	Slow learner classes
52 - 68	Mild M/H	Classes for educable
36 - 51	Moderate M/H	Classes for Trainable
35 - Below	Severe/Profound M/H	Classes for Severe/Profound"

(p. 41)

According to The Vineland Adaptive Behavior Scale, Expanded Form Manual:

"There are many reasons for administering the Survey Form and the Expanded form...:

To diagnose mental retardation, when the Vineland is used with an individually administered intelligence test as recommended in the guidelines of the American Association of Mental Deficiency (AAMD) (Grossman 1983) and Public Law pp. 94-142." (p. 113)

"The Vineland Adaptive Behavior Scales are well suited for the evaluation and diagnosis of the mentally retarded because of comprehensive content and careful development and standardization... Statistically significant strengths and weaknesses in specific areas of behavior may be determined." (p. 4)

"Adaptive levels for the Adaptive Behavior Composite and adaptive behavior domain standard scores are given...In addition, a footnote to the table presents a classification system for standard scores of 70 or below which was adapted from the manual of the AAMD (Grossman 1983). This system may be used by those wishing to describe performance in categories corresponding to the levels of mental retardation defined in the AAMD." (p. 118)

According to the Columbia Mental Maturity Scale:

This test "is an easily administered individual test yielding an estimate of the general reasoning ability of children aged 3 years 6 months through 9 years 11 months." (p. 7)

"The use of the above classification type in the format described above, which requires no verbal response and a minimal motor response from the child makes the CMMS especially suitable for use with children who have cerebral palsy or other brain damage, mental retardation, visual handicaps, speech impairment, or hearing loss." (7) "The major vehicle for describing performance on the CMMS is the Age Deviation Score (ADS), which indicates the extent to which a child's performance on the CMMS deviates from the typical or average performance of children of his chronological age tested in the national standardization program." (p. 17)

"Figure 7. Interrelationships among CMMS Age Deviation Scores, percentile ranks, and stanines:

Verbal Description	Range of CMMS ADSs	Range of Percentile Ranks	Stanines
Superior 4%	128 and above	96 and above	4% 9

Above Average	120 - 127	89 - 95	7%	8
19%	112 - 119	77 - 88	12%	7
Average	104 - 111	60 - 76	17%	6
54%	96 - 103	40 - 59	20%	5
	88 - 95	23 - 39	17%	4
Below Average	80 - 87	11 - 22	12%	3
19%	71 - 79	4 - 10	7%	2
Low	70 and below	Below 4	4%	1"

(p. 18)

"Additional interpretive information is provided for CMMS scores in the form of a Maturity Index (MI). These indices are not scores in the strict sense of the term, but are number-letter indicators showing which one of the thirteen CMMS standardization groups the child's performance most closely resembles..." (p. 27)

According to Differential Ability Scales:  
Mental retardation is not defined.

"The DAS is appropriate for use with the vast majority of children...[including]...educable mentally retarded..." (p. 1)

"Testing Children with Severe or Profound Mental Retardation

A GCA [General Conceptual Ability] score for very low functioning children can be obtained with out-of-level administration of the Cognitive Battery..." (p. 34)

"...Examiners working with children who are severely retarded should be aware of over-interpretation of age equivalents. Nevertheless, such scores provide the best available guidelines for a child's level of functioning in various cognitive areas..." (p. 35)

The terms severe or profound mental retardation, and severely retarded, and educable mentally retarded are used. "Special Populations" is used as an over-inclusive term.

According to McCarthy Scales of Children's Abilities:

"With increasing recognition of the early years as critical in the child's development, psychologists are evaluating children at younger and younger ages to determine their general intellectual level as well as their strengths and weaknesses in important abilities." This test was "designed to satisfy the need for a single instrument to facilitate such a measurement... The McCarthy Scales are appropriate for children from ages 2 1/2 through 8 1/2 years of age." (p. 1)

Table 7  
General Cognitive Ability levels

CGI	Descriptive Classification	Theoretical Percent	Actual Percent (MSCA Normative Sample)
130 and above	Very Superior	3.0	3.1
120 - 129	Superior	7.5	8.5
110 - 119	Bright Normal	16.0	15.9
90 - 109	Average	46.8	46.7
80 - 89	Dull Normal	16.0	15.7
70 - 79	Borderline	7.5	7.3
69 and below	Mentally Retarded	3.0	2.8

(p. 25)

"Children with GCI's [General Cognitive Index] of 69 and below are designated as Mentally Retarded rather than divided into several layers of retardation. The reason for this is that the standardization sample did not include sufficient numbers of cases representing these extreme intellectual deviates to warrant any further

classification. For the same reason, all the children with GCI's of 130 or above are designed to one category (Very Superior)." (p. 25)

"Applications to Exceptional Children

The McCarthy Scales should be quite useful for assessing the strengths and weaknesses of mentally retarded children, since the battery includes a number of "easy" tasks which were designed for very young children. Many mentally retarded children have multiple handicaps of varying degrees of severity and in a wide range of pathological syndromes..." (p. 27)

According to WRAT-R: Wide Range Achievement Test Administration Manual: (1984)  
Mental retardation is not specifically defined.

**“RATINGS OF STANDARD SCORES**

<b>Classification</b>	<b>Score Range</b>
Very Superior	130 and up
Superior	120 to 129
High Average	110 to 119
Average	90 to 109
Low Average	80 to 89
Borderline	70 to 79
Deficient	69 and below” (p. 29)

According to the Kaufman Test of Educational Achievement:

This "is an individually administered measure of the school achievement of children and adolescents in grades 1 through 12. It offers age-based norms (6 years 0 months to 18 years 11 months) as well as grade-based norms and comprises two separate and non-overlapping forms." (p. 1)

Information taken form Figure 3.1 Graphic display of descriptive categories and corresponding percentages of students in each category.

<b>“Descriptive Category</b>	<b>Standard Score Range</b>
Lower Extreme	69 and below
Well Below Average	70 – 79
Below Average	80 – 89
Average	90 – 109
Above Average	110-119
Well Above Average	120-129
Upper Extreme	130 and above” (p. 69)

According to Kaufman Assessment Battery for Children (K-ABC): (1983)

"Exceptional children, who have been excluded from most standardization samples, were systematically included in the K-ABC normative group. Proportions of learning disabled, mentally retarded, speech-and language impaired, gifted and talented, severely emotionally disturbed, and other handicapped children were included in the standardization sample in the approximate proportions that characterize the school-age population in the United States." (p. 11)

"Mentally Retarded

Table 4.32 includes profiles of 73 educable mentally retarded (EMR) children... and 38 trainable mentally retarded (TMR) children...The scores earned in the K-ABC Global Scales by these two samples are commensurate wiht their diagnostic classifications, as the EMRs averaged 65 to 71, and the TMRs achieved means of 52 to 56. In addition, the difference of approximately one standard deviation between the two groups

on their Global Scales attests to the validity of the K-ABC in differentiating between groups previously diagnosed as EMR and TMR." (p. 142)

"One final note that is pertinent regarding the use of the K-ABC for retarded persons. We recommend that no one be classified as retarded unless that person's score is below any designated cutoff point on both (*italics*) the Mental Processing Composite (*italics*) and the Achievement Scale (*italics*) (as well as on an appropriate measure of adaptive behavior). In many ways, good performance on the K-ABC Achievement Scale represents applied intelligence, and is often a function of nonintellective variables such as motivation, need for achievement, and environmental press. A person who does demonstrate competence within the Achievement domain, despite subnormal performance on the K-ABC intelligence scales, does not in our opinion merit a label of mental retardation." (p. 143)

According to the Bayley Scales of Infant Development: Second Edition:

"Assessment of Young Children with Disabilities

Renamed the *Individuals with Disabilities Education Act* in 1990 (IDEA; PL 101-476), subchapter VIII addresses five major areas of development for children from birth to 3 years of age: cognitive development, physical development, language and speech development, psychosocial development and self-help skills. The BSID-II is designed to assess four of these areas: cognitive, physical, language and speech, and psychosocial." (p. 4)

"The BSID-II provides objective, standardized scores to assess a child's cognitive, physical, language and psychosocial development. The index scores from the Mental and Motor Scales, the child's level of performance on the four facets, and the examiner's ratings of the child's behavior on the BRS enable the clinician to set goals on intervention planning." (p. 5)

"Diagnosing Developmental Delay

There is no universally accepted definition of developmental delay...Regardless of the criteria used, the BSID-II can provide relevant normative and developmental age level information to aid diagnosis of delay. It is not sound practice, however, to base a diagnostic decision solely on results of a single developmental evaluation. Other relevant background information such as medical and social history should be considered." (p. 5)

"The assessment of intelligence largely arose from a need on the part of educators to determine which children were suitable learners for the classroom, and which children were mentally deficient..." (p. 5)

According to the Technical Manual, Stanford-Binet Intelligence Scale: Fourth Edition:

"*Samples of Mentally Retarded Students*

Three studies using samples of examinees who had been designated as mentally retarded by their schools were conducted to compare their performance on the Fourth Edition with Form L-M of the Stanford-Binet, WISC-R, or WAIS-R and also to determine the correlations between scores on the Fourth Edition and the other tests." (p. 78)

"...The results of these analyses also showed that the means on all the areas and Composite of the Fourth Edition for the mentally retarded examinees were significantly lower than those for learning disabled examinees and that the Fourth Edition can reliably discriminate between these two groups of exceptional students." (p. 87)

"exceptional students" includes gifted, learning disabled, and mentally retarded. (p. 83)

According to "Did I Say That?" Articles and Commentary on the Try Another Way System:

#### **Alternative definition**

"Mental retardation refers to a level of functioning which requires from society significantly above average training procedures and superior assets in adaptive behavior on the part of society, manifested throughout the life of both society and the individual."(p. 148) "...The mentally retarded person is characterized by the level of power needed in the training process required for her to learn, and not by limitations in what she can learn. The height of a retarded person's level of functioning is determined by the availability of training technology and the amount of resources society is willing to allocate and not by significant limitations in biological potential..." (p. 148)

According to Testing Young Children: A reference Guide for Developmental, Psychoeducational, and Psychological Assessments:

### **Definition**

“The terms *developmental delay* and *mental retardation* often are used interchangeably and, as such, are confusing to both parents and teachers. The American Association of Mental Deficiency (AAMD) defines mental retardation as “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period.” (Grossman, 1983, p.11) (p. 168)

According to:

Daniel, M. (1994). A Review of the Differential Ability Scales. In R. J. Steinberg (Ed.), Encyclopedia of Human Intelligence, (pp. 350—354). New York, NY: Macmillan.

Mental retardation is not defined.

“Because of its features for out-of-level testing, the DAS measures at relatively low ranges of ability. On most cognitive batteries the overall IQ (or its equivalent) can be measured in a range from about 40 to 160; the DAS’s CGA score goes down to 25 for children aged 3-9 and older.” (p. 353)

According to:

World Health Organization. (1992). International Classification of Diseases: 10th Revision. Ann Arbor, MI: Commission on Professional and Hospital Activities. [ICD-10]

### **Mental Retardation**

“A condition of arrested or incomplete development of the mind, which is especially characterized by impairment of skills manifested during the developmental period, skills which contribute to the overall level of intelligence, i.e. cognitive, language, motor, and social abilities. Retardation can occur with or without any other mental or physical condition.

Degrees of mental retardation are conventionally estimated by standardized intelligence tests. These can be supplemented by scales assessing social adaptation in a given environment. These measures provide an approximate indication of the degree of mental retardation. The diagnosis will also depend on the overall assessment of intellectual functioning by a skilled diagnostician.

Intellectual abilities and social adaptation may change over time, and, however poor may improve as a result of training and rehabilitation. Diagnosis should be based on current levels of functioning.

The following fourth-character subdivisions are for use with categories F70-F79 to identify the extent of impairment behavior:

**.0 With the statement of no, or minimal, impairment of behaviour**

**.1 Significant impairment of behavior requiring attention or treatment**

**.8 Other impairments of behaviour**

**.9 Without mention of impairment of behaviour**

Use additional code, if desired, to identify associated conditions such as autism, other developmental disorders, epilepsy, conduct disorders, or severe physical handicap.

#### **F70 Mild mental retardation**

Approximate IQ range of 50 to 69 (in adults, mental age from 9 to under 12 years). Likely to result in some learning difficulties in school. Many adults will be able to work and maintain good social relationships and contribute to society.

**Includes:** feeble-mindedness  
Mild mental subnormality

#### **F71 Moderate mental retardation**

Approximate IQ range of 35 to 49 (in adults, mental age from 6 to under 9 years). Likely to result in marked developmental delays in childhood but most can learn to develop some degree of independence

in self-care and acquire adequate communication and academic skills. Adults will need varying degrees of support to live and work in the community.

**Includes:** moderate mental subnormality

**F72 Severe mental retardation**

Approximate IQ range of 20 to 34 (in adults, mental age from 3 to under 6 years). Likely to result in continuous need of support.

**Includes:** severe mental subnormality

**F73 Profound mental retardation**

IQ under 20 (in adults, mental age below 3 years). Results in severe limitations in self-care, continence, communication and mobility.

**Includes:** profound mental subnormality

**F78 Other mental retardation**

**F79 Unspecified mental retardation**

**Includes: mental:**

- **deficiency NOS**
- **subnormality NOS” (pp. 369-370)**

According to:

American Educational Research Association, American Psychological Association & National Council on Measurement in Education (1999). Standards for Educational and Psychological Testing. Washington, DC: AERA.

Mental retardation is not explicitly defined.

According to:

Mackintosh, N.J. (1998). IQ and Human Intelligence. New York, NY: Oxford University Press.

Mental retardation is not explicitly defined, however the book refers to the AAMD definition and the World Health Organization definition. (pp. 176-177)

According to:

Barlow, C. F. (1978). Mental Retardation and Related Disorders. Philadelphia, PA: Davis

Definition of mental retardation:

“Mental retardation is a symptom complex, the chief features of which consist of (1) intellectual subnormality associated with (2) maladaptive behavior. The term implies onset during childhood or before. The symptomatic diagnosis is based on analysis of behavior, and the cardinal features of the symptom complex vary quantitatively in different individuals. There is general agreement with these rather obvious statements. I do not propose to quibble about the distinction between mental retardation (which is the descriptive term most often used) and mental subnormality or deficiency (terms which are more committing and precise). In practice it is the custom to use these more or less interchangeably, and it may as well be accepted.” (P.1)

“...I should like to exclude a numerically large group of individuals from the current discussion. Here I refer to the people who test in the borderline (IQ 70 to 84) or upper range of mild retardation (IQ 55 to 69), but who should probably be regarded as biologically normal. In general, such individuals are reasonably well adapted, and the behavioral aspect of the definition of mental retardation does not apply. In some measure, their underachievement is an artifact of the usual test instruments. These tests were designed to predict the educational potential of a middle class society, and low test results can be influenced by social and economic issues which have existed for several generations. This important aspect of the problem is most appropriately regarded as an urgent concern of society as a whole and not specifically a medical problem.” (P. 1-2)

“Using the Wechsler Scale, the American Association on Mental Deficiency has suggested the four categories of *mild* (IQ 55 to 69), *moderate* (IQ 40 to 54), *severe* (IQ 25 to 39), and *profound* (IQ less than 25). The

breakdown of the higher grades of defect is useful and has pragmatic value in assessing educability and long term outlook.” (P. 2-3)

According to:

Jongsma, A. and Slaggert, K. (2000). The Mental Retardation and Developmental Disability Treatment Planner. New York, NY: John Wiley & Sons.

This book uses the DSM-IV definition of mental retardation.

### **Step Six: Diagnosis Determination**

“The determination of an appropriate psychological diagnosis is based on an evaluation of the client’s complete clinical presentation. The clinician must compare the behavioral, cognitive, emotional, and interpersonal symptoms that the client presents to the criteria for diagnosis of a mental illness condition as described in DSM-IV.” (p. 7)

According to:

Das, J. P., Naglieri, J. A., & Kirby, J. R. (1994). Assessment of Cognitive Processes: The PASS Theory of Intelligence. Boston, MA: Allyn & Bacon.

Definition of Mental Retardation:

PASS AND MENTAL RETARDATION

### **A Proposed Model**

“The definition of mental retardation typically used, as illustrated in Figure 8-3, stems from four possible combinations of IQ and adaptive behavior . There are certain characteristics that describe the level of adaptive functioning of a child or a retarded individual, such as social skills and good work habits, but adaptive behavior itself is a combination of a person’s competence and adjustment. *Competence* is another name for cognitive functioning or ability, and adjustment is part of personality. As figure 8-4 shows, both cognitive functioning and personality lead to an important component of adaptive behavior, *judgement...*” (pp. 143-144)

**FIGURE 8-3**  
**Definition of Mental Retardation**  
**Intellectual functioning**

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Adaptive Behavior	Retarded	not retarded
retarded	mentally retarded	not mentally retarded
not retarded	not mentally retarded	not mentally retarded

(p. 143)

According to:

Baroff, G.S. (1991). Developmental Disabilities: Psychosocial Aspects. Austin, TX: Pro-Ed.

“As defined by the American Association on Mental Retardation, a definition also adopted by the American Psychiatric Association, ‘*mental retardation* refers to significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period” (Grossman, 1973, 1977, and 1983; American Psychiatric Association, 1980). This chapter explores (1) important aspects of intelligence itself, (2) the nature of the intellectual deficit in mental retardation, (3) its prevalence, (4) its causation, (5) its associated or secondary disabilities, (6) its effect on adaptation, and (7) its special-service needs.” (p. 54)

**CAUSES OF MENTAL RETARDATION**

“Mental retardation may arise from either biological or psychosocial causes. *Biological* causes involve damage to the brain and may be due to hereditary, chromosomal abnormalities, or events occurring during pregnancy, at birth, or early in childhood. *Psychosocial* causes refer to retardation in nonorganically impaired children, generally from impoverished families in which retardation is also found in parents and siblings (Grossman, 1983).” (p. 71)

According to:

Gardner, H. (1993). Frames of Mind: the Theory of Multiple Intelligences. New York, NY: Basic Books.

This book does not use or define mental retardation. It uses retarded/retardation but does not define them.

According to:

Jensen, A. R. (1998). The G Factor: The Science of Mental Ability. Westport, CT: Praeger  
 Mental Retardation

“In a well-researched book on the history of attempts to raise the intelligence of retarded persons, Hermon Spitz, an expert in this area, concluded as follows:

‘Much of the evidence from basic psychological research suggests that mild and moderate mental retardation [IQ < 70] is not primarily a deficiency in learning and memory except to the extent that thinking enters into learning and memory. Mental retardation is, rather, a *thinking* disability, and intelligence is synonymous with thinking. Although it is possible to educate mentally retarded persons and to train them to perform many tasks, up to a point, we do not yet have the means of raising their general level of intelligence. We have no prescription that will change their capacity to think and to reason at the level of persons of average intelligence, to solve novel problems and real-life challenges of some complexity, and to respond effectively to an infinite variety of circumstances, but just to those used in training.’” (p. 336)

“The level of mental retardation described by Spitz is not of a type distinct from the total distribution of *g* in the total population, rather it reflects a level of *g* lying on the same continuum as the average and higher levels. Mental retardation is the lower tail of the whole range of *g* represented by the bell-curve distribution of IQ in the population. The differences in *g* (reflected by IQ) are manifested continuously throughout the entire scale covered by the bell curve. That is, they are not differences of any kind but of degree.” (p. 336)

“There are two distinguishable types of mental retardation, usually referred to as *endogenous* and *exogenous* or, more commonly as *familial* and *organic*. The lower tail (IQ < 70) of the normal distribution of IQ in the population comprises both of these types of retardation. In familial retardation there are no detectable causes of retardation other than the normal polygenic and microenvironmental sources of IQ variation that account for the IQ differences throughout the entire range of IQ... Organic retardation, on the other hand, comprises over 350 identified etiologies, including specific chromosomal and genetic abnormalities and environmental, prenatal, perinatal, and postnatal brain damage due to disease or trauma that affects brain development...” (p. 368)

According to:

Jacobson, J. & Mulick, J. (Eds.). (1996). Manual of Diagnosis and Professional Practice in Mental Retardation. Washington, DC: American Psychological Association.

Definition of Mental Retardation

*Editorial board*

“Mental retardation (MR) refers to (a) significant limitations in general intellectual functioning; (b) significant limitations in adaptive functioning, which exist concurrently; and (c) onset of intellectual and adaptive limitations before the age of 22 years.

Significant limitations in intellectual functioning are determined from the findings of assessment by using a valid and comprehensive, individual measure of intelligence that is administered in a standardized format and interpreted by a qualified practitioner. The criterion of significance is an IQ or comparable normed score that is two or more standard deviations below the population mean for the measure.

Significant limitations in adaptive functioning are determined by the findings of assessment by using a comprehensive, individual measure of adaptive behavior. For adaptive behavior measures, the criterion of significance is a summary index score that is two or more standard deviations below the mean for the appropriate norming sample, or that is within the range of adaptive behavior associated with the obtained IQ range sample in instrument norms. The latter would be used, for example, if the adaptive behavior instrument does not present information on the means and standard deviations of the norming sample. For adaptive behavior measures that provide factor or summary scores, the criterion of significance is multidimensional; that is, two or more of these scores lie two or more standard deviations below the mean for the appropriate norming sample or lie within the range of adaptive behavior associated with the intellectual level consistent with the obtained intelligence quotient, as indicated by the instrument norms. For adaptive behavior measures that permit assessment of both adaptive and maladaptive behavior, presence of clinically significant maladaptive behaviors in the absence of significant limitations of adaptive behavior, as defined here, does not meet the criterion of significant limitations in adaptive functioning.

The concurrent limitations in intellectual functioning and adaptive functioning must originate before the age of 22 years. For people first assessed after the age of 22 years, a classification of MR should be assigned only if their developmental and clinical history indicates a probability of onset prior to age 22. Onset may occur in infancy, childhood, or adolescence.” (p. 13)

“Classification requires that all three criteria must be met. Psychological diagnosis based exclusively on intellectual functioning and age of onset criteria is clinically inappropriate.

The etiology of concurrent limitations in intellectual and adaptive functioning, assuming a clinically appropriate and individualized assessment process, is not relevant to initial classification, although it may be of prognostic value and have implications for proper treatment. Furthermore, developmental prognosis is not a consideration in classification, because the definition is based upon functioning at the time of the assessment.” (p. 14)

## Degree of MR

“MR is further classified within four distinctive ranges of severity, specified as mild, moderate, severe, and profound in degree. Severity is determined by concurrent presence of IQ scores within four ranges and adaptive functioning consistent with each range. In table 1, for example, assume an intellectual measure with a mean of 100, *SD* of 15, and *SE* of 5.

Table 1.  
Degrees of MR

Degree of MR	IQ score range	IQ deviation Cutting point	Extent of concurrent adaptive limitations
Mild	55-70	-2 <i>SD</i>	Two or more domains
Moderate	35-54	-3 <i>SD</i>	Two or more domains
Severe	20-34	-4 <i>SD</i>	All domains
Profound	Below 20	-5 <i>SD</i>	All domains

*Note.* IQ ranges are approximate due to *SE*. Limitations in adaptive functioning are relative to expected performance by chronological age and require scores at -2 *SD* or lower for significance. MR = mental retardation.” (p. 14)

According to:

Grossman, H. J. (Ed.). (1973). Manual on Terminology and Classification in Mental Retardation (1973 rev.). Washington, DC: American Association on Mental Deficiency.

**Definition**

“The definition of mental retardation in this manual is slightly changed to reflect the deletion of the Borderline category. The definition used for the current manual is:

‘Mental Retardation refers to significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period.’

MENTAL RETARDATION as defined, denotes a level of behavioral performance without reference to etiology. Thus, it does not distinguish between retardation associated with psychosocial or polygenic influences and retardation associated with biological deficit. Mental retardation is descriptive of current behavior and does not imply prognosis. Prognosis is related more to such factors as associated conditions, motivation, treatment and training opportunities than to mental retardation itself.

INTELLECTUAL FUNCTIONING may be assessed by one or more of the standardized tests developed for that purpose; SIGNIFICANTLY SUBAVERAGE refers to performance which is more than two standard deviations from the mean or average of the tests. On the two most frequently used tests of intelligence, Stanford-Binet and Wechsler, this represents I.Q.’s of 67 and 69, respectively. (It is emphasized that despite current practice a finding of low I.Q. is never by itself sufficient to make the diagnosis of mental retardation. See figure 1).

The upper age limit of the DEVELOPMENTAL PERIOD is placed at *18 years* and serves to distinguish mental retardation from other disorders of human behavior.

ADAPTIVE BEHAVIOR is defined as the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of his age and cultural group. Since these expectations vary for different age groups, DEFICITS IN ADAPTIVE BEHAVIOR will vary at different ages. These may be reflected in the following areas:

During INFANCY AND CHILDHOOD in:

1. SENSORY-MOTOR SKILLS DEVELOPMENT and
2. COMMUNICATION SKILLS (including speech and language) and
3. SELF HELP SKILLS and
4. SOCIALIZATION (development of ability to interact with others) and

During CHILDHOOD AND EARLY ADOLESCENCE in:

5. APPLICATION OF BASIC ACADEMIC SKILLS IN DAILY LIFE ACTIVITIES and
6. APPLICATION OF APPROPRIATE REASONING AND JUDGEMENT IN MASTERY OF THE ENVIRONMENT and
7. SOCIAL SKILLS (participation in group activities and interpersonal relationships) and

During LATE ADOLESCENCE AND ADULT LIFE in:

8. VOCATIONAL AND SOCIAL RESPONSIBILITIES AND PERFORMANCES” (pp. 11 - 12)

**“FIGURE 8-3  
Definition of Mental Retardation  
Intellectual functioning**

	Intellectual functioning	
	retarded	not retarded
Adaptive Behavior	retarded	not retarded
retarded	mentally retarded	not mentally retarded
not retarded	not mentally retarded	not mentally retarded

(p. 13)

Table 1

“IQ ranges for three frequently used intelligence tests are as follows:

<i>LEVELS</i>	<i>OBTAINED INTELLIGENCE QUOTIENT</i>	
	<i>Stanford-Binet And Cattell (s.d. 16)</i>	<i>Wechsler Scales (s.d. 15)</i>
<b>MILD</b>	67-52	69-55
<b>MODERATE</b>	51-36	54-40
<b>SEVERE</b>	35-20	39-25 (Extrapolated)
<b>PROFOUND</b>	19 and below	24 and below (Extrapolated)” (p. 13)

According to:

Sattler, J. M. (1992). *Assessment of Children 3rd Edition*. San Diego, CA: Jerome M. Sattler, Publisher, Inc.

“**Definition of Mental Retardation**” (p. 647)

“The term *mental retardation* describes a heterogeneous group of conditions characterized by low or very low intelligence and deficits in adaptive behavior. The most widely used definition is the one proposed by the American Association on Mental Deficiency (AAMD) (Grossman, 1983, p. 11):

‘Mental retardation refers to significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period.’

This definition refers to a level of behavioral performance without reference to etiology. The key terms in the definition bear closer inspection.

- *Significantly subaverage* refers to performance that is 2 or more standard deviations below the population mean.
- *General intellectual functioning* refers to performance on a standardized intelligence test that measures, as far as possible, general cognitive ability rather than one limited facet of ability, such as receptive vocabulary or spatial-analytic skills.
- *Adaptive behavior* refers to the effectiveness with which individuals meet the standards of personal independence and social responsibility expected of individuals of their age and cultural group. Deficits in adaptive behavior are evaluated according to developmental age. During infancy and early childhood, adaptive behavior deficits are evaluated in relationship to sensorimotor skills, communication skills, self-help skills, and socialization skills. During childhood and early adolescence, the focus is on the application of (a) basic academic skills in daily life activities, (b) appropriate reasoning and judgement in interacting with the environment, and (c) social skills. During late adolescence and adult life, adaptive behavior centers on vocational and social responsibilities and performances.
- *The developmental period* is regarded as the period between birth and about 18 years of age.” (p. 647)

### **Etiology of Mental Retardation**

“Etiologically, mental retardation falls into two broad groupings - familial and organic.” (p. 648)

“1. The *familial group* encompasses most mildly mentally retarded persons, in the IQ range of 50 to 69. The familially retarded are primary individuals in the lower portion of the normal distribution of intelligence; their performance reflects normal intellectual variability. The variability ifs likely due to the result of normal polygenic variation - that is, the combined action of many genes. Performance in this range can also be associated with (a) pathological factors that interfere with brain functioning (such as subclinical organic damage that has yet to be discovered) or (b) the combined effect of below-average hereditary and a markedly below-average environment. The familially retarded tend to come from low socioeconomic status (SES) groups...” (p. 648)

“2. The *organic* group includes primarily the more severely mentally retarded, in the IQ range of below 50, although organic etiologies are seen in some milder forms of mental retardation as well. The etiology of the organic type of mental retardation may be associated with a genetic component linked to single gene effects, chromosomal abnormalities, or brain damage. Organically mentally retarded children usually have severe and often diffuse brain damage or malformations, commonly originating during the prenatal period. They show a severe lag in behavioral development, sometimes accompanied by an abnormal appearance. Identification of the more severe forms of retardation is relatively easy because children fail to reach normal motor and language development milestones.” (p. 649)

According to:

Polloway, E. & Smith, J. (1987). “Current status of the Mild Mental Retardation Construct: Identification, Placement and Programs.” In M. C. Wang, M.C. Reynolds & H. J. Wallberg (Eds.). The Handbook of Special Education: Research and Practice. New York, NY: Pergamon Press.

Definition of Mental Retardation

The AAMD 1983 definition is referred to:

“The importance of considering the ceiling IQ of 70 as an approximation subject to clinical judgement has been reaffirmed in the AAMD’s most recent revised definition (Grossman, 1983). This manual has advocated the removal of the use of standard deviations and has emphasized the use of 70 as an estimation of the IQ ceiling... probably of greater significance was their endorsement of the importance of adaptive behavior (AB)... By complementing IQ with this second dimension, the definition clearly decreased the potential number of individuals who could accurately be identified as mentally retarded.” (pp. 9-10)

According to: Wechsler, D. (1989) Wechsler Preschool Primary Scale of Intelligence - Revised. San Antonio, TX: The Psychological Corporation.

“The WPPSI-R was developed for use with children aged 3 years through 7 years, 3 months. The test items, materials, and administrative directions were selected for their suitability and effectiveness with children of these ages. The guidelines and procedures for administering the WPPSI-R provided in this chapter should be used as a general framework for the examiner in assessing a young child.” (p. 13)

Diagnosis:

“Diagnosing Mental Retardation in the Preschool Child” (p. 9)

“According to principles set forth by the American Association on Mental Deficiency, the diagnosis of mental retardation requires the establishment of both below-average intellectual functioning and a deficit in adaptive behavior (Grossman, 1983). Under this definition a systematic assessment of the child’s general intellectual ability such as that provided by the WPPSI-R, is an essential part of any diagnosis of mental retardation. But a low score on the WPPSI-R does not in itself constitute a diagnosis of mental retardation. The second component of the definition, adaptive behavior, is somewhat less well defined and perhaps less well understood than is intelligence. Its facets may be measured by various published scales, or by less formal behavioral checklists.” (p. 9)

According to: Burgemeister, B. B., Blum, L. H. & Lorge, I. (1972). Columbia Mental Maturity Scale. San Antonio, TX: Psychological Corporation Harcourt Brace Jovanovich, Inc.  
(Guide for administering and interpreting)

“The use of the classification item type in the format described above... makes the CMMS especially suitable for use with children who have cerebral palsy or other brain damage, mental retardation, visual handicaps, speech impairment, or hearing loss.” (p. 7)

“The Columbia Mental Maturity Scale (CMMS) is an easily administered individual test yielding an estimate of the general reasoning ability of children aged 3 years 6 months through 9 years 11 months.” (p. 7)

"The major vehicle for describing performance on the CMMS is the Age Deviation Score (ADS), which indicates the extent to which a child's performance on the CMMS deviates from the typical or average performance of children of his chronological age tested in the national standardization program." (p. 17)

Figure 7. Interrelationships among CMMS Age Deviation Scores, percentile ranks, and stanines:

Verbal Description	Range of CMMS ADSs	Range of Percentile Ranks	Stanines	
Superior 4%	128 and above	96 and above	4%	9
Above Average 19%	120 - 127	89 - 95	7%	8
	112 - 119	77 - 88	12%	7
Average 54%	104 - 111	60 - 76	17%	6
	96 - 103	40 - 59	20%	5
	88 - 95	23 - 39	17%	4
Below Average 19%	80 - 87	11 - 22	12%	3
	71 - 79	4 - 10	7%	2
Low	70 and below	Below 4	4%	1 (18)

"Additional interpretive information is provided for CMMS scores in the form of a Maturity Index (MI). These indices are not scores in the strict sense of the term, but are number-letter indicators showing which one of the thirteen CMMS standardization groups the child's performance most closely resembles..." (27)

According to: Thorndike, R. L., Hagen, E. P., & Sattler, J. M. (1986). Technical Manual, Stanford-Binet Intelligence Scale: Fourth Edition. Chicago, IL: Riverside Publishing.

"Table c.1 provides classifications for the composite score in the Fourth Edition. The terminology generally follows that used in Form L-M, except for the two lowest categories:

**Slow learner** replaces "Borderline Defective" (p. 127) **Mentally Retarded** replaces "Mentally Defective." (p. 127)

"The score ranges, however, differ from those used in Form L-M. For example, in the Fourth Edition the **Average** classification includes from 89 to 110, whereas in Form L-M the scores ranged from 90 to 109. The changes in score ranges were made to conform more closely with current classification practices." (p. 127)

"Table C.1

Ability classifications  
COMPOSITE

STANDARD AGE SCORE	CLASSIFICATION
132 and above	Very Superior
121-131	Superior
111-120	High Average
89-110	Average
79 - 88	Low Average
68 - 78	Slow Learner
67 and below	Mentally Retarded" (p. 127)

"...It was also decided that the revised scale would continue to provide a composite or overall score that would represent g, or general reasoning ability." (p. 9)

"... To some extent, the selection of the theoretical model was influenced by consideration of the ways that clinicians and educators have used previous editions of the Stanford-Binet. They have used it most frequently to identify gifted students, to assess the cognitive abilities of mainstream students who are having difficulty learning, and to identify the mentally retarded..." (p. 9)

According to: Blatt, B. (1987). The Conquest of Mental Retardation. Austin, TX: PRO-ED.

**Definition**

“The American Association on Mental Deficiency most recently defined mental retardation as significantly subaverage general intellectual functioning (less than approximately 70 IQ), resulting in or associated with concurrent impairments in adaptive-behavior (problems associated with early development, learning, or social adjustment), and manifested during the developmental period (between birth and 18 years) (Grossman, 1977, p. 11).”

“Today, the term mental retardation is no longer as universally accepted as it was, for example, 30 or 40 years ago. Some states use the term mentally handicapped or mentally impaired, and frequently disabled is used in lieu of retarded. Especially in more affluent communities, children labeled learning disabled include those who might have been classified as educable mentally retarded.” (133) Since biblical times different terms have been used to refer to the “mentally retarded” population. (pp. 67-68)

According to: Flanagan, D., Genshaft, J. & Harrison, P. (Eds.) (1997). Contemporary Intellectual Assessment: Theories, Tests and Issues. Mahwah, NJ: Lawrence Erlbaum Associates.

**Definition**

The most recent definition referred to is the “AAMR...revise(d) ...definition of MR (Luckasson et al, 1992). (p. 141)

According to: Carroll, J. B. (1993). Human Cognitive Abilities: a Survey of Factor Analytic Studies. New York, NY: Cambridge University Press.

**Definition**

Mental Retardation is not defined.

According to:

Heber, R. F. (1961). “A Manual on Terminology and Classification in Mental Retardation (2nd Ed.).” Monograph Supplement to the American Journal of Mental Deficiency

**Definition**

“MENTAL RETARDATION REFERS TO SUBAVERAGE INTELLECTUAL FUNCTIONING WHICH ORIGINATES DURING THE DEVELOPMENTAL PERIOD AND IS ASSOCIATED WITH IMPAIRMENT IN ADAPTIVE BEHAVIOR” (p. 3)

“THE term MENTAL RETARDATION, as hereafter used, incorporates all of the meanings that have been ascribed historically to such concepts as amantia, feeblemindedness, mental deficiency, mental subnormality, idiocy, imbecility and minority, etc. Choice of the term *mental retardation* was predicated on the basis that it appears to present to be the most preferred term among professional personnel of all disciplines concerned. Though the separate words *mental* and *retardation* both have meanings not always consonant with those of their present context, it is felt that the combined term, *mental retardation*, will prove adequate if all personnel will consistently utilize this term according to the criteria set forth.

SUBAVERAGE refers to performance which is greater than one Standard Deviation...below the population mean of the age group involved on measures of general intellectual functioning. Level of GENERAL INTELLECTUAL FUNCTIONING may be assessed by performance on one or more of the various objective tests which have been developed for that purpose. Though the upper age limit of the DEVELOPMENTAL PERIOD cannot be precisely specified it may be regarded, for practical purposes, as being at approximately sixteen years. This criterion is in accord with the traditional concept of mental retardation with respect to age and serves to distinguish mental retardation from other disorders of human behavior.

The definition specifies that the subaverage intellectual functioning must be reflected by IMPAIRMENT IN ADAPTIVE BEHAVIOR. Adaptive behavior refers primarily to the effectiveness of the individual in adapting to the natural and social demands of his environment. Impaired adaptive behavior may be reflected in: (1) maturation, (2) learning, and/or (3) social adjustment. These three aspects of adaption are of different importance as qualifying conditions of mental retardation for different age groups.” (p. 3)

Medical classification:

*mental retardation* due to ...(etiology/coexisting condition specified)

Behavioral classification:

*mental retardation* - "In accord with the concept of mental retardation as being characterized by subaverage intellectual functioning associated with deficits in adaptive behavior, the primary classification makes use of two dimensions: *Measured Intelligence* and *Adaptive Behavior*." (p.55)

**According to:**

Borthwick-Duffy, S. A. & Eyman, R. K. (1990). "Who Are the Dually Diagnosed?" *American Journal on Mental Retardation*, 94, 586-595.

**Definition - mental retardation is not defined**

*Mental retardation* is used throughout.

*Retarded* is used (p. 586).

No other terms used.

**According to:**

Ellis, R. E., Woodley-Zanthos, P., Dulaney, C. L. & Palmer, R. L. (1989). "Automatic-Effort Processing and Cognitive Inertia in Persons with Mental Retardation." *American Journal on Mental Retardation*, 93(4), pp. 412-423.

**Definition - mental retardation is not defined**

*retarded* is used as a synonym of mental retardation.

*Mentally retarded* is used.

No other terms used.

**According to:**

Healey, K. N. & Masterpasqua, F. (1992). "Interpersonal Cognitive Problem Solving Among Children with Mild Mental Retardation." *American Journal on Mental Retardation*, 96, 4, 367-372.

**Definition - mental retardation is not defined**

*mental retardation* is used throughout.

*Retardation* not used as a synonym

No other terms used.

**According to:**

Greenspan, S. (1994). "Review of the 1992 AAMR Manual." *American Journal of Mental Retardation*, 98, 544-549.

**Definition:**

The change from the AAMR 1983 definition to the 1992 definition is criticized. "...The forthcoming ICD 10 and DSM-4 classification systems" are criticized for "adopting the new AAMR definition, but keeping the four (largely IQ based) severity levels." (p. 548)

**Proposed Definition:**

"A definition of mental retardation that could have accomplished this purpose might read something like "a condition - due to limitations in "intellectual functioning" (broadly defined to include social, practical, and conceptual intelligence) that causes an individual to have ongoing need for supports (professional or natural) in order to succeed in important age and culturally relevant roles in community activities, such as learning, work, residing, personal relationships, recreation, etc." (p. 547)

**According to:**

Reiss, S. (1994). "Issues in Defining Mental Retardation." *American Journal on Mental Retardation*, 99(1), 1-7.

**Definition**

“The 1983 and the 1992 AAMR definitions of mental retardation...” are referred to (p. 1)  
*Mental retardation* is used.

**According to:**

Siperstein, G. N. (1992). “Social Competence: An Important Construct in Mental Retardation.” American Journal on Mental Retardation, 96(4), iii-iv.

**Definition**

The 1983 AAMR definition of mental retardation is referred to. Only the “impairment of adaptive behavior”(p. iii) part of the definition is quoted:

“Significant limitations in an individual’s effectiveness in meeting the standard’s of maturation, learning, personal independence, and those social responsibilities that are expected for his or her age level and cultural group. (p.11)” (p. iii)

The term *mental retardation* is used. No other terms are used.

**According to:**

Zigler, E., Balla, D. & Hodapp, R. (1984). On the Definition and Classification of Mental Retardation. American Journal of Mental Deficiency, 89, 215-230.

**Definition**

The AAMD definition is referred to (pp. 216, 218, 226).

“The lack of a soundly established definition also hinders classification *within* mental retardation.” (pp. 215) ...individuals labeled ‘mentally retarded’ might be assigned... to two distinct groups: those suffering from known organic defects and the much larger mildly retarded group who evidence no organic pathology.” (pp. 215)

“The majority of people fit into the larger distribution where a significant determinant of intelligence is polygenic inheritance. Individuals in the second group also begin life with polygenes for a given level of intelligence, but some prenatal insult, such as Down syndrome or radiation, or postnatal encounters, such as anoxia or lead poisoning, prevented their intended expression. These individuals are usually classified as organically retarded. (see Table 3)

The larger group of retarded persons have no known organic defects and are commonly referred to as ‘familially retarded’ (or ‘retarded due to psychosocial disadvantage,’ in the current nomenclature [Grossman 1983, p. 149]). Famially retarded persons typically have IQ’s between 50 and 70 and an immediate relative who is below average in intelligence. When mental retardation is defined simply as IQ’s below 70, approximately 75% of retarded persons are considered to be of the familial type.” (pp. 219-220)

“TABLE 3

Past and Present terms to describe Retarded persons

Organic	Familial
Organically involved	Cultural-familial retarded due to Psychosocial disadvantage
Organismically impaired	Nonorganically involed Lower portion of the polygenic curve of intelligence
Moderate, severe and profound	Mild
Exogenous	Endogenous Garden variety Feeble minded
Imbecile, idiot	Moron
Trainable and subtrainable	Educable” (p. 223)

**According to:**

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 1, Number 1, 1995

**Definition**

“In 1992 the American Association on Mental Retardation adopted a revised definition of mental retardation requiring that the designation be applied only to people who, in addition to meeting the previous criterion of having significantly subaverage intellectual function [American Association on Mental Retardation, 1992], have significantly limited adaptive skills...” (p. 4)

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 1, Number 2, 1995

**Definition** - Not defined

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 1, Number 3, 1995

**Definition** - Not defined

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 1, Number 4, 1995

**Definition** - Not defined

**According to:**

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 2, Number 1, 1996

This is about specific reading disability.

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 2, Number 2, 1996

This is about Down Syndrome

*Mental retardation* is used.

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 2, Number 3, 1996

This is about the molecular medicine of mental retardation and developmental disabilities.

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 2, Number 4, 1996

This is about animal models for the study of mental retardation. The term *mental retardation* is used.

**According to:**

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 3, Number 1, 1997

This is about Perinatal and Neonatal Brain Injury.

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 3, Number 2, 1997

This is about Cerebral Palsy.

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 3, Number 3, 1997

This is about environmental toxins and developmental disabilities. *Developmental disabilities* is used to refer to developmental disabilities including mental retardation. (p. 230)

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 3, Number 4, 1997

**Definition:**

The AAMD 1992 definition is referred to (p. 323). “Children with *mental retardation and developmental disabilities...*” is an example of how the term is used. (p. 358)

**According to:**

Mental Retardation and Developmental Disabilities Research Reviews

Volume 4, Number 1, 1998

This is about Mental Retardation.

**Definition:**

The AAMR 1992 definition is cited and referred to (p. 2).

“...The new American Association on Mental Retardation definition of mental retardation is not compatible with a biomedical approach. There exist no generally accepted clinical practice guidelines for the medical assessment of mental retardation and developmental delay...” (p. 2)

*Mental retardation* is used (2, 6, 14, 26, 36, 50). *Developmental disabilities* is used (p. 26)

Mental Retardation and Developmental Disabilities Research Reviews

Volume 4, Number 2, 1998

**Definition:**

This is about Autism. *Mental retardation* is used; *mental retardation/developmental disability* is used. There can be coexistence of Autism and Mental Retardation (p. 97).

Mental Retardation and Developmental Disabilities Research Reviews

Volume 4, Number 3, 1998

This is about plasticity, injury response, and neuronal regeneration

Mental Retardation and Developmental Disabilities Research Reviews

Volume 4, Number 4, 1998

This is about neural tube defects

**According to:**

Mental Retardation and Developmental Disabilities Research Reviews

Volume 5, Number 1, 1999

This is about early experience and early intervention

*mental retardation* is used (p. 41)

Mental Retardation and Developmental Disabilities Research Reviews

Volume 5, Number 2, 1999

This is about phenylketonuria. The term *mental retardation* is used (p. 155).

Mental Retardation and Developmental Disabilities Research Reviews

Volume 5, Number 3, 1999

This is about Attention Deficit Hyperactivity Disorder.

Mental Retardation and Developmental Disabilities Research Reviews

Volume 5, Number 4, 1999

This is about Psychopharmacology in Developmental Disabilities. The term *mental retardation* is used (pp. 253, 270, 305, 322, 348). *Intellectual disability* is used (264) to refer to a population with intellectual disabilities. “*MRDD*” population is used throughout.

**According to:**

Mental Retardation and Developmental Disabilities Research Reviews

Volume 6, Number 1, 2000

This is about normal and abnormal development of the CNS. The term *mental retardation* is used. (pp. 41, 45)

Mental Retardation and Developmental Disabilities Research Reviews

Volume 6, Number 2, 2000

This is about specific behavioral/cognitive phenotypes of genetic disorders. It includes “*mental*

*retardation...Alzheimer's disease...[and] down syndrome.”* (84) The term *mental retardation* is used. (pp. 99, 104)

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 6, Number 3, 2000  
This is about pediatric neuroimaging.

**According to:**

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 7, Number 1, 2001  
This is the millennium issue.

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 7, Number 2, 2001  
This is about community living. The term *mental retardation* is used (pp. 75, 115);  
*MR/DD (mental retardation/developmental disabilities)* is used (pp. 105-113);  
*mental retardation or developmental disabilities* is used (pp. 115-120);  
*developmental disabilities* is used as a keyword (pp. 122).

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 7, Number 3, 2001  
This is about progressive neurological disorders. The term *mental retardation* is used. (pp. 167)

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 7, Number 4, 2001  
This is about Glutamate signaling in development and in neonatal brain injury.

**According to:**

Baird, P. A. & Sadovnick, A. D. (1985). “Mental Retardation in Over Half-a-Million Conservative Livebirths: An Epidemiological Study.” *American Journal of Mental Deficiency*, 89, pp. 323-330.

**Definition:**

Mental retardation is not defined:

“Mental retardation is the single largest category of life-long handicaps affecting populations in ‘developed’ countries.” (323). The term *mental retardation* is used. (pp. 323, 326, 327, 328), *retarded* is used as a synonym (323, 326, 327, 328). No other terms are used.

**According to:**

Baumeister, A. (1987). “Mental Retardation: Some Conceptions and Dilemmas.” *American Psychologist*, 42, 796-800.

**Definition**

The “current definition of mental retardation proposed by the American Association on Mental Deficiency (AAMD) and the American Psychiatric Association (1980) is multidimensional...” (pp. 796) “The AAMD definition of mental retardation purports to consider social adaptation as a major determinant of retardation.” (pp. 799) Furthermore “...the dominant systems of definition and classification have not changed radically over the past two decades. The focus continues to be on subaverage general intelligence and deficits in adaptive behavior.” (pp. 799)

“In a number of states, the condition of ‘learning disabilities’ is rapidly displacing ‘educable mental retardation’ as a diagnostic entity in public schools.” (pp. 797). The term *mental retardation* is used. *Retarded* is used as a synonym. (pp. 799)

**According to:**

Bogdan, R. & Biklen, D. (1977). “Handicapism.” *Social Policy*, 7(4), pp. 14-19.

**Definition - Not defined**

The term *mentally retarded* is used throughout. *Handicapism* is an over-inclusive of *mentally retarded* (p. 14); *retarded* is used as a synonym (pp. 15, 17, 18), and *retardes* is used infrequently.(p. 16)

**According to:**

Bogdan, R. & Taylor, S. J. (1989). "Relationships with Severely Disabled People: the Social Construction of Humanness." Social Problems, 36(2), 135-148.

**Definition - Not defined**

*Mental retardation/mentally retarded* is used; *retarded* is used as a synonym (pp. 138,139, 140, 141,142, 144, 45). "Severely and profoundly retarded individuals...have often been called 'vegetables'..." (p. 138) The term *developmentally disabled* is also used. (p. 142)

**According to:**

Leiter, R. G. (1940). The Leiter International Performance Scale, Santa Barbara, CA: Santa Barbara State College Press.

**Definition**

mental retardation is not defined.

No "other terms" are used.

"The Scale will be found most useful and the results most reliable for children between the ages of five and twelve years. There are enough reserve tests on either side of these limits to make the results obtained on children between the ages of five and twelve years fairly reliable." (p. 4)

"Any improvement in the existing methods of measuring general intelligence without the use of language will at once be taken advantage of by those dealing with deaf and foreign children as well as by those who must estimate children with speech and varying degrees of language handicap...However, the Leiter International Performance Scale has several features which, in some ways, make it superior to the verbal test. In the first place, the scoring is completely objective. The blocks are either in the right notches or they are not, and the examiner is never called upon for his judgement on the matter. All possible correct answers were determined by the findings at the time of standardization. Secondly, this non-language scale makes use of more novel test material than does the verbal test. Therefore, there is less chance of the subject's having had experiences which were the same or similar to the situations employed in the Leiter International Performance Scale... Finally, the elimination of both language and familiar materials tends to reduce to a minimum the influence of environmental factors on the test results." (p. 4)

**According to:**

Russell, A. (1985). "The Mentally Retarded, Emotionally Disturbed Child and Adolescent." In M. Sigman (Ed.), Children with Emotional Disorder and Developmental Disabilities: Assessment and Treatment (pp. 111-136). New York, NY: Grune & Stratton

**Definition**

"Unless otherwise noted, the definition of mental retardation used in this chapter will be that employed by the American Association of Mental Deficiency..." (p. 112)

**Conclusion**

This review of the association between mental retardation and psychiatric disorder has several implications for both the clinician and the researcher concerned with mental health of retarded children." (p. 131)

*Mentally retarded/mental retardation* is used. *Retarded* is used as a synonym. *Organic impairments* is also used. "A proportionately large number of these children would have IQ's below 50 and also have diagnosable organic impairments. This simply reflects that the more severe forms of retardation are often associated with neurologic and physical handicaps and are identified the earliest." (p. 115)

"In addition to the fact that tested intelligence may change, it is a striking phenomenon that children and adolescents classified as mildly mentally retarded and without organic disease, predominantly come from disadvantaged backgrounds (Zigler, 1967). This population has been referred to as the familial retarded or the sociocultural retarded..." (pp. 115-116)

**According to:**

Batshaw, M. L., & Perret, Y. M. (1992). Children with Disabilities. Baltimore, MD: Paul H. Brookes.

**Definition:**

“To be classified as having mental retardation, a person must: 1) have significantly subaverage intellectual functioning; 2) have mental retardation as the result of an injury, disease, or abnormality that existed before age 18; and 3) be impaired in his or her ability to adapt to the environment (Grossman, 1983). In May of 1992, the American Association on Mental Retardation (AAMR) voted to expand this definition, particularly in its focus on assessing adaptive skills and implementing a multidimensional matrix of support (Luckasson, in press).” (p. 266)

“Since the average intelligence quotient, or IQ score, is 100, and the standard deviation of most IQ tests is 15 points, a person scoring two standard deviations below the mean would be considered to have mental retardation (American Psychiatric Association, 1980) if he or she also meets the other criteria of mental retardation. (The 1992 AAMR definition allows a range of 70-75 rather than an exact cut-off).” (p.267)

**“Mental retardation** Intellectual functioning at least two standard deviations below the mean”

(p. 586) “...This subgroup is the population that has mental retardation due to organic causes - for example, birth injuries, genetic diseases, trauma, and infections.” (p. 267)

**According to:**

Richardson, S.A. & Koller, H. (1996). Twenty-Two Years: Causes and Consequences of Mental Retardation. Cambridge, MA: Harvard University Press.

**Definition:**

“There are several problems in definition particular to mental retardation, and these are reflected in the nine successive revisions of the definition made by the American Association on Mental Retardation (AAMR). The current definition, from the ninth edition of *Mental Retardation* (1992, p. 1) is based on the following three criteria...” (p. 66)

“To define mental retardation after school-leaving age, we used the World Health Organization (WHO) definition: ‘marked impairment in the individual to adapt to the daily demands of the social environment.’ (1985, p. 8)” (p. 287)

“1. ‘Mental retardation’ is one of a series of synonyms that have been used over time to refer to this condition. As each term has developed negative connotations and come to seem derogatory and stigmatizing, it has been replaced by another. Examples include ‘mental deficiency,’ ‘mental subnormality,’ and ‘intellectual disabilities.’ The term currently in use in the United Kingdom is ‘learning disability,’ but we will follow the contemporary usage in the United States and use ‘mental retardation.’” (p. 4n)

“According to an early etiological classification, mental retardation (MR) comprised two categories: organic and cultural-familial. Organic factors were thought to cause severe MR, and cultural-familial factors mild MR... Organic factors (“nature”) are the result of brain dysfunction from various causes and include injuries, infection, toxins, simple specific gene for chromosome disorders (which can occur in successive generations), and complex genetic factors that determine the endowment for intelligence. Cultural-familial factors (“nurture”) are social environmental conditions that influence children’s psychosocial development.” (p.97)

**According to:**

Shannon, J. (2000). Mental Retardation Sourcebook. Detroit, MI: Omnigraphics, Inc.

**Definition:**

“People with mental retardation are those who develop at a below average rate and experience difficulty in learning and social adjustment. The regulations for the Individuals with Disabilities Education Act (IDEA) provide the following technical definition for mental retardation:

‘Mental retardation means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child’s educational performance.’

‘General intellectual functioning’ is typically measured by an intelligence test. Persons with mental retardation usually score 70 or below on such tests. ‘Adaptive behavior’ refers to a person’s adjustment to everyday life. Difficulties may occur in learning, communication, social, academic, vocational, and independent living skills.

Mental retardation is not a disease, nor should it be confused with mental illness. Children with mental retardation become adults; they do not remain ‘eternal children.’ They do learn, but slowly, and with difficulty.

Probably the greatest number of children with mental retardation have chromosome abnormalities. Other biological factors include (but are not limited to): asphyxia (lack of oxygen); blood incompatibilities between the mother and the fetus; and maternal infections such as rubella or herpes. Certain drugs have also been linked to problems in fetal development.” (pp. 3-4)

### “How Is Mental Retardation Diagnosed?”

“The AAMR process for diagnosing and classifying a person as having mental retardation contains three steps and describes the system of supports a person needs to overcome limits in adaptive skills.

The first step in diagnosis is to have a qualified person give one or more standardized intelligence tests and a standardized adaptive skills test, on an individual basis.

The second step is to describe the person’s strengths and weaknesses across four dimensions. The four dimensions are:

1. Intellectual and adaptive behavior skills
2. Psychological/emotional considerations
3. Physical/health/etiological considerations
4. Environmental considerations

... The third step requires an interdisciplinary team to determine needed supports across the four dimensions. Each support identified is assigned one of four levels of intensity - intermittent, limited, extensive, pervasive.” (pp. 14-15)

No terms other than *mental retardation* used.

### According to:

Edgerton, R. B, Lloyd, B. and Cole, M. (Eds.). (1979). Mental Retardation. Cambridge, MA: Harvard University Press.

### Definition:

“The most widely used definition of mental retardation in this country was published in 1977 by the American Association on Mental Deficiency (AAMD); ‘Mental retardation refers to significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period’ (the upper age of the developmental period is set at eighteen.”

“The most common British definition, based on the Mental Health Act of 1959, refers to severe subnormality (rather than mental retardation), which is described as ‘a state of arrested or incomplete development of mind which includes subnormality of intelligence and is of such a nature and degree that the patient is incapable of living an independent life or of guarding himself against serious exploitation, or will be incapable when of age to do so.’ Less severe retardation is referred to as subnormality, defined as a condition ‘which includes subnormality of intelligence and is of a nature or degree which requires or is susceptible to medical treatment or other care or training of the patient.’”

### TYPES OF RETARDATION

“In the past an *idiot* was someone with an IQ of less than 30, an *imbecile* had an IQ of 30 to 50, and a *moron* an IQ of 50 to 70. These terms have been replaced throughout much of the English-speaking world by the AAMD system in which there are these categories: mild retardation (IQ 55-69), moderate retardation (IQ 40-54), severe retardation (IQ 25-39), and profound retardation (IQ less than 25). While the World Health Organization has recommended the use of the terms *mild subnormality*, *moderate subnormality*, and *severe subnormality*, their proposal has not been widely accepted.” (p. 3)

“...it is practicable to refer to two basic types: clinical and sociocultural... Clinical retardation can usually be shown to have concomitant organic deficits of a neurological, metabolic, or physiological sort...” (4) In “Sociocultural retardation... such children are most likely to have been born to parents who are economically, socially, and educationally disadvantaged...” (p. 4)

**According to:**

Braddock, D., Hemp, R., Bachelder, L., & Fujiura, G. (1998). The State of the States in Developmental Disabilities (5th ed.). Washington, DC: AAMR.

**Definition:**

“The American Association on Mental Retardation (Luckasson et al., 1992) has identified several criteria required to determine the presence of mental retardation.” (p. 3) “...The most common developmental disability: mental retardation.” (p. 3)

**According to:**

Braddock, D., Hemp, R., Bachelder, L., & Fujiura, G. (1995). The State of the States in Developmental Disabilities (4th ed.). Washington, DC: AAMR.

**Definition**

mental retardation is not explicitly defined.

MR/DD is used (p. 4). The term *mental retardation/developmental disabilities* is used throughout.

**According to:**

Bray, N. (Ed.). (1997). International Review of Research in Mental Retardation, Volume 21. Burlington, MA: Academic Press.

**Definition**

Mental retardation is not defined.

“Mentally retarded individuals, *see also* Developmentally disabled; Intellectually disabled.” (p. 255)

**Developmentally Disabled definition:**

“The classification of developmental disabilities includes the presence of a mental or physical impairment with onset prior to age 22 and a continuance throughout the individuals’ lifetime. Furthermore, this mental or physical impairment results in limitations in self-care, language, learning, mobility, and independent living (J. Jacobson, 1991).” (p. 187)

**Intellectual Disabilities definition:**

“The term *intellectual disabilities* is employed in this chapter to refer to people who have an IQ more than two standard deviations below the mean and who have social functioning deficits in addition. The term is preferred to ‘*mental retardation*’ (used widely in the United States) because it is less pejorative, and it is preferred to the term ‘*learning disabilities*’ (now gaining broad acceptance in the UK), since it is less likely to be confused with specific learning disabilities, particularly in the United States.” (p. 33n)

**According to:**

Bray, N. (Ed.). (1996). International Review of Research in Mental Retardation, Volume 20. Burlington, MA: Academic Press.

**Definition:**

Mental retardation is not defined, nor in the index.

**According to:**

Developmental Disabilities Act of 1984 (pp. 208-209)

“Supported employment is characterized in the U.S. Developmental Disabilities Act of 1984 as (a) being for persons who, because of their disabilities, are only likely to achieve competitive employment at or above minimum wage if they have ongoing support, (b) occurring particularly in work sites where people without disabilities are employed; and (c) requiring support through supervision, training, and transportation to sustain paid work...”

**Handicaps, types (p. 139)** “*Disability* covers such a wide range of definitions that it is difficult to draw from studies that used a mixed bag of conditions to compare with mere absence of disability.” (p. 139) Also “the assumption cannot be made that Down’s syndrome is in any way ‘pure’ uncomplicated mental retardation.” (p. 139). The term *intellectual disability* is used as an old term in some quotes more than 15 years old.

**According to:**

Glidden, L. (Ed.) (2001). International Review of Research in Mental Retardation, Volume 24. Burlington, MA: Academic Press.

**Definition:**

“B. Diagnostic criteria

ICD and DSM criteria have frequently been adopted in studies of mental health problems in people with MR as a way of attempting to improve the validity and reliability of diagnosis... Overall, it is clear that many researchers and clinicians are of the opinion that ICD-10 and DSM-IV are inadequate for classifying of symptoms of mental illness in people with MR. At the present time, however, our knowledge of the field is insufficient to develop new algorithms.” (p. 224)

*Mentally retarded*, and *retarded* are used. *Intellectual disabilities* is used. Etiology is also referred to: “Organic etiology and MR” (p. 364). “The distinctions between persons with familial and organic retardation led to a call for the study of homogeneous groups of persons with familial retardation so as not to confound the data on with that from persons whose functioning may be impaired as a result of biological damage, independent of mental retardation.” (p. 305) “The first significant modification of the developmental approach was the study of groups of persons who are homogeneous with regard to the organic etiology of mental retardation.” (p. 305)

**According to:**

Glidden, L. (Ed.) (1999). International Review of Research in Mental Retardation, Volume 22. Burlington, MA: Academic Press.

**Definition**

Not defined.

The “other terms” are not used.

**What alternative terms have been used over the last decade?**

- *Developmental disability* is not used for this purpose (American Psychiatric Association, 1994).
- *Mental deficiency* is not used for this purpose (American Psychiatric Association, 1994).
- *Down Syndrome* is not used for this purpose (American Psychiatric Association, 1994).
- *Intellectual disability* is not used for this purpose (American Psychiatric Association, 1994).
- *Organic mental disorder* is not used for this purpose (American Psychiatric Association, 1994).
- *Developmental disability* is not used for this purpose (American Psychiatric Association, 1980).
- *Mental deficiency* is not used for this purpose (American Psychiatric Association, 1980).
- *Down Syndrome* is used for this purpose: “In 25% of the cases, the etiologic factors are known biological abnormalities...such as Down’s syndrome... In such cases the diagnosis is usually established at birth or at a relatively young age, and the severity of the Mental Retardation is generally moderate to profound.” (American Psychiatric Association, 1980, p. 38).
- *Intellectual disability* is not used for this purpose (American Psychiatric Association, 1980).
- *Organic mental disorder* is not used for this purpose (American Psychiatric Association, 1980).
- “Mild Mental Retardation is roughly equivalent to the educational category “educable.””(American Psychiatric Association, 1980, p. 39).

- “Moderate Mental Retardation is roughly equivalent to the educational category of Trainable.”(American Psychiatric Association, 1980, p. 39).
- *Borderline Intellectual Functioning* is used “in the IQ range of 71 to 84.” (American Psychiatric Association, 1980, p. 40).
- *Developmental disability* is not used for this purpose. “*Mental retardation* refers to a particular state of functioning that begins in childhood and in which limitations in intelligence coexist with related limitations in adaptive skills. In this sense, it is a more specific term than *developmental disability*” (American Association on Mental Retardation, 1992, p. 9)... “Mental retardation is only one diagnosis that may result in a developmental disability” (American Association on Mental Retardation, 1992, p. 17).
- *Mental deficiency* is not used for this purpose (American Association on Mental Retardation, 1992).
- *Down Syndrome* is used to describe a sub-set of those with mental retardation: “The net result of these genetic and developmental alterations and compensatory processes and interventions, once adulthood is achieved, is a brain that differs in structure and/or function from that of people without mental retardation. This is most clearly shown in “organic” conditions such as Down syndrome” (American Association on Mental Retardation, 1992, p. 16-17)... “For some individuals, the underlying disorder that is the etiology of the mental retardation (is) Down syndrome” (American Association on Mental Retardation, 1992, p. 64)... “Down syndrome may be associated with... mental retardation” (American Association on Mental Retardation, 1992, p. 67)... “The physical examination may provide evidence of an obvious etiology often associated with mental retardation, such as Down syndrome”(American Association on Mental Retardation, 1992, p. 75).
- *Intellectual disability* is not used for this purpose (American Association on Mental Retardation, 1992).
- *Organic mental disorder* is not used for this purpose. (American Association on Mental Retardation, 1992).
- *Developmental disability* is used as an over-inclusive term: According to the Developmental Disabilities Assistance and Bill of Rights Act, codified at 42 U.S.C. §§ 6000-81 (1976 & Supp. V 1981) “**developmental disability** (is) a chronic disability which is attributable to a mental or physical impairment or combination of mental and physical impairments; is manifested before age 22; is likely to continue indefinitely; and results in substantial functional limitations in three or more areas of major life activity”(Grossman, 1983, p. 168).
- *Mental deficiency* is used for this purpose: “**mental deficiency** (1) mental retardation; (2) sometimes used to distinguish the group of persons having demonstrable organic basis for their intellectual deficits. (See also mental retardation)” (Grossman, 1983, p. 183).
- *Down Syndrome* is used as an under-inclusive term: “**Down syndrome**... syndrome in which the majority of individuals are trisomic for chromosome number 21; clinical manifestations include... varying degrees of mental retardation” (Grossman, 1983, p. 169).
- *Intellectual disability* is not used for this purpose (Grossman, 1983).
- *Organic mental disorder* is not used for this purpose (Grossman, 1983).
- The term *educable* corresponds with *mildly retarded individuals* and *Mild mental retardation*... The term *trainable individuals* corresponds with *moderate mental retardation*...The term *profoundly retarded persons* corresponds with *profound mental retardation*...The term *retardation* is used as a synonym of *mental retardation* (Grossman, 1983, p. 184).
- *Developmental disability* is used as an over-inclusive term: “**developmental disability** (is) a disability attributable to mental retardation, cerebral palsy, epilepsy, or another neurological condition of an

individual which is closely related to mental retardation or to require similar treatment, and which originates in childhood, is likely to continue, and constitutes a substantial handicap to the individual” (Grossman, 1977, p. 132).

- *Mental deficiency* is used for this purpose: “**mental deficiency** See *mental retardation*; sometimes used to distinguish the group of persons having demonstrable organic basis for their intellectual deficits” (Grossman, 1977, p. 148).
- *Down Syndrome* is used as an under-inclusive term: “**Down syndrome**... syndrome in which the majority of affected individuals are trisomic for chromosome number 21; clinical manifestations include... varying degrees of mental retardation” (Grossman, 1977, p. 133).
- *Intellectual disability* is not used for this purpose (Grossman, 1977).
- *Organic mental disorder* is not used for this purpose (Grossman, 1977).
- “It is recommended that the terms MILD, MODERATE, SEVERE and PROFOUND be used to describe levels of retardation” (Grossman, 1977, p. 19).
- “MILD retardation is roughly equivalent to the educational term “educable;” moderate retardation includes those individuals who are likely to fall into the educational category of “trainable;” the severe group includes individuals sometimes known as “dependent retarded;” individuals in the profound retardation level are among those sometimes called “life support” level. (Grossman, 1977, p. 19).
- *retardation* is used as a synonym of *mental retardation* (Grossman, 1977, p. 19).
- *Developmental disability* is not used for this purpose (Wechsler, 1997).
- *Mental deficiency* is not used for this purpose (Wechsler, 1997).
- *Down Syndrome* is not used for this purpose (Wechsler, 1997).
- *Intellectual disability* is not used for this purpose (Wechsler, 1997).
- *Organic mental disorder* is not used for this purpose (Wechsler, 1997).
- *Developmental disability* is not used for this purpose (Wechsler, 1991).
- *Mental deficiency* is used to refer to the same population (Wechsler, 1991).
- *Down Syndrome* is not used for this purpose (Wechsler, 1991).
- *Intellectual disability* is not used for this purpose (Wechsler, 1991).
- *Organic mental disorder* is not used for this purpose (Wechsler, 1991).
- *Developmental disability* is not used for this purpose (Woodcock & Johnson, 1990).
- *Mental deficiency* is not used for this purpose (Woodcock & Johnson, 1990).
- *Down Syndrome* is not used for this purpose (Woodcock & Johnson, 1990).
- *Intellectual disability* is not used for this purpose (Woodcock & Johnson, 1990).
- *Organic mental disorder* is not used for this purpose (Woodcock & Johnson, 1990).
- The terms *cognitive abilities and achievement, handicapped people, subjects with disabilities, subjects who have physical or multi handicapping conditions* are used to describe a broader population than solely those with mental retardation (Woodcock & Johnson, 1990).
- *Developmental disability* is not used for this purpose (Baroff, 1986).
- *Mental deficiency* is not used for this purpose (Baroff, 1986).

- *Down Syndrome* is used as an under-inclusive term: It “accounts for about 8 percent of the institutionalized retarded population” (Baroff, 1986, p. 104)... “Mental retardation may be caused by biological factors either operating fairly independently, as in the case of such clearly organic forms as Down syndrome (mongolism), or interacting with psychological ones as may be true in cultural-familial mental retardation” (Baroff, 1986, p. 95).
- *Intellectual disability* is not used for this purpose (Baroff, 1986).
- *Organic mental disorder* is not used for this purpose (Baroff, 1986).
- The term *retardation / retarded* is used as a synonym of *mental retardation / mentally retarded* (Baroff, 1986).
- *Developmental disability* is not used for this purpose (Matson & Breuning, 1983).
- *Mental deficiency* is not used for this purpose (Matson & Breuning, 1983).
- *Down Syndrome* is used as an under-inclusive term: “The most prevalent chromosomal cause of moderate to severe mental retardation is Down’s Syndrome... As with any other mentally retarded individual, Down’s Syndrome children show remarkable variety, with intelligence estimates from profound to mild retardation and in some cases normal levels, and considerable differences in developmental milestones and adaptive behaviors (Matson & Breuning, 1983, p. 10).
- *Intellectual disability* is not used for this purpose (Matson & Breuning, 1983).
- *Organic mental disorder* is not used for this purpose (Matson & Breuning, 1983).
- *Educable* is used to refer to those with *mild retardation*. *Trainable* is used to refer to those with *moderate retardation* (Matson & Breuning, 1983, p. 7).
- *Retardation* is used as a synonym of *mental retardation* (Matson & Breuning, 1983).
- *Developmental disability* is not used for this purpose (Hodapp, Burack & Zigler, 1990).
- *Mental deficiency* is not used for this purpose (Hodapp, Burack & Zigler, 1990).
- *Down Syndrome* is used as an under-inclusive term: “For example, chromosomal disorders, such as Down and fragile X syndromes, are clearly implicated as causes of impaired cognitive development, although not always of mental retardation” (Hodapp, Burack & Zigler, 1990, p. 42).
- *Intellectual disability* is not used for this purpose (Hodapp, Burack & Zigler, 1990).
- *Organic mental disorder* is used to describe a subset of those with *mental retardation*. It is based on the etiology of the disorder. “The various causes of organic damage include chromosomal abnormalities, metabolic imbalances, neurological insults, congenital defects, perinatal complications, and infections” (Hodapp, Burack & Zigler, 1990, p. 40).
- The term *nonorganic (cultural-familial) retardation* is used to describe a subset of those with *mental retardation*. It is based on the etiology of the disorder. “As seen in the earlier review of the two-group approach, past researchers have suggested various causes of nonorganic retardation, including familial, genetic, social, environmental, undiscovered organic defects, and any number of combinations of these factors. Accordingly, these researchers have employed a variety of terms to describe the etiology of this type of retardation (e.g., unknown, cultural-familial, familial, and sociocultural)” (Hodapp, Burack & Zigler, 1990, p. 39).
- *Retardation* is used as a synonym of *mental retardation* (Hodapp, Burack & Zigler, 1990)
- *Educable and trainable mentally retarded* are two different levels of *mental retardation*: “Kaufman and Kaufman (1983) reported no significant difference between sequential and simultaneous processing, and

little variety in achievement tests, in groups of educable and trainable mentally retarded children” (Hodapp, Burack & Zigler, 1990, p. 231).

- *Developmental disability* is not used for this purpose (Sattler, 2001).
- *Mental deficiency* is not used for this purpose (Sattler, 2001).
- *Down Syndrome* is not used for this purpose (Sattler, 2001).
- *Intellectual disability* is not used for this purpose (Sattler, 2001).
- *Organic mental disorder* is not used for this purpose (Sattler, 2001).
- *Developmental disability* is used as an over-inclusive term: “...mental retardation is a type of developmental disability. In recent years, the concept *developmental disability* has often been used to refer to individuals with mental retardation, particularly with adult populations. Although the term *developmental disability* covers a population of individuals other than those with mental retardation, its meaning clearly includes mental retardation” (Bierne-Smith, Ittenbach & Patton, 2001, p. 40).
- *Mental deficiency* is used for this purpose: “...terms such as *mental deficiency* and *mental subnormality* have also been used” (Bierne-Smith, Ittenbach & Patton, 2001, p. 44).
- *Down Syndrome* is used to describe a sub-set of those with *mental retardation*: “A child who is retarded may be classified as a clinical type. To be regarded as a specific clinical type, an individual must show certain facial, body, and disorder characteristics relating to a particular syndrome associated with mental retardation. There are a number of these syndromes, but the one most frequently associated with mental retardation is Down syndrome” (Bierne-Smith, Ittenbach & Patton, 2001, p. 260).
- *Intellectual disability* is not used for this purpose (Bierne-Smith, Ittenbach & Patton, 2001).
- *Organic mental disorder* is not used for this purpose (Bierne-Smith, Ittenbach & Patton, 2001).
- *Retarded* is used as a synonym of *mentally retarded* (Bierne-Smith, Ittenbach & Patton, 2001).
- “Some professionals like the terms intellectually challenged or mental disability” (Bierne-Smith, Ittenbach & Patton, 2001, p. 44).
- *Developmental disability* is not used for this purpose (Taylor, 1997).
- *Mental deficiency* is not used for this purpose (Taylor, 1997).
- *Down Syndrome* is not used for this purpose (Taylor, 1997).
- *Intellectual disability* is not used for this purpose (Taylor, 1997).
- *Organic mental disorder* is not used for this purpose (Taylor, 1997).
- *Learning disabilities*: “...the decline in the number of students identified as having mild levels of mental retardation and the rise of students identified as having learning disabilities have been associated with this overall reduction in the category of retardation (Baumeister, 1987; Forness & Polloway, 1987)” (Taylor, 1997, p. 7).
- *Retardation* is used as a synonym of *mental retardation* (Taylor, 1997, p. 7).
- *Developmental disability* is not used for this purpose (Gillberg and O’Brien, 2000).
- *Mental deficiency* is not used for this purpose (Gillberg and O’Brien, 2000).
- *Down Syndrome* is used as an under-inclusive term: “DOWN SYNDROME The commonest single genetic syndrome causing learning disability” (Gillberg and O’Brien, 2000, p. 7).

- “Throughout this chapter, the U.K. term ‘learning disability’ is employed: this denotes ‘mental retardation’ as defined by ICD-10 (WHO 1992) and DSM-IV (APA 1994), corresponding to IQ<70 presenting in the developmental period. ‘Learning disability’ is classified in the same manner as ‘mental retardation’, namely: mild, IQ 50-69; moderate, IQ 35-49; severe, IQ 20-34; profound, IQ <20” (Gillberg and O’Brien, 2000, p. 12).
- *Intellectual disability* is not used for this purpose (Gillberg and O’Brien, 2000).
- *Organic mental disorder* is not used for this purpose (Gillberg and O’Brien, 2000).
- *Developmental disability* is not used for this purpose (Burack, Hodapp and Zigler, 1998).
- *Mental deficiency* is not used for this purpose (Burack, Hodapp and Zigler, 1998).
- *Down Syndrome* is used as an under-inclusive term: “Chromosomal anomalies are the single most common cause of severe mental retardation. Trisomies account for about two-thirds of cytogenetic abnormalities associated with mental retardation and, of these, Down syndrome, or trisomy 21, is the most common, also making it the most common single cause of severe mental retardation” (Burack, Hodapp and Zigler, 1998, p. 52).
- *Intellectual disability* is not used for this purpose (Burack, Hodapp and Zigler, 1998).
- *Organic mental disorder* is not used for this purpose (Burack, Hodapp and Zigler, 1998).
- *Organic mental retardation* and *familial mental retardation* are used to describe 2 different forms of *mental retardation*: “Within mentally retarded samples, children with organic forms of mental retardation (children who’s mental retardation may be attributed to some biological or physiological factor) have been distinguished from familial retarded children (children with no known organic impairment who typically come from lower socioeconomic classes and have family members who are similarly retarded)” (Burack, Hodapp and Zigler, 1998, p. 447).
- *retardation* is used as a synonym of *mental retardation* (Burack, Hodapp and Zigler, 1998).
- *Developmental disability* is not used for this purpose (Ellis, 1997).
- *Mental deficiency* is not used for this purpose (Ellis, 1997).
- *Down Syndrome* is used to describe a sub-set of those with *mental retardation*: “Genetic factors play an important etiologic role for many forms of mental retardation...Two genetic disorders, Down syndrome and fragile X syndrome, will typically account for one third of the identified genetic cases in samples of individuals affected by mental retardation (Bregman & Hodapp, 1991)” (Ellis, 1997, p. 99).
- *Intellectual disability* is not used for this purpose (Ellis, 1997).
- *Organic mental disorder* is not used for this purpose (Ellis, 1997).
- “Those people with mental retardation whose condition can be traced to some organic perturbation, such as an inborn error of metabolism, are considered to have structural limitations. This leads to the well-known dichotomous expression of mental retardation as brain-damaged versus sociocultural, organic versus nonorganic, endogenous versus exogenous and so on” (Ellis, 1997, p. 25-26).
- *Developmental approach*: “The approach retains its basic focus on the child with retardation’s development and the environment in which that child develops” (Ellis, 1997, p. 130).
- *Developmental disability* is not used for this purpose (U.S. Department of Education, 2000).
- *Mental deficiency* is not used for this purpose (U.S. Department of Education, 2000).
- *Down Syndrome* is included under the broader term of *Congenital disorders* (U.S. Department of Education, 2000, p. IV-4).

- *Intellectual disability* is not used for this purpose (U.S. Department of Education, 2000).
- *Organic mental disorder* is not used for this purpose (U.S. Department of Education, 2000).
- *Developmental disability* is used for this purpose: "... access to specialized mental retardation/developmental disabilities services remains so very inadequate for individuals with lifelong disabilities who live in lower socioeconomic households" (President's Committee on Mental Retardation, 1999, p. 4).
- *Mental deficiency* is not used for this purpose (President's Committee on Mental Retardation, 1999).
- *Down Syndrome* is not used for this purpose (President's Committee on Mental Retardation, 1999).
- *Intellectual disability* is not used for this purpose (President's Committee on Mental Retardation, 1999).
- *Organic mental disorder* is not used for this purpose (President's Committee on Mental Retardation, 1999).
- *Mild cognitive limitations*: "Do not be confused by the term 'mild cognitive limitations.' This term is not meant to describe a new category of mental disability. It is not part of the accepted definition of mental retardation nor is it a term that is approved or preferred by PCMR...(it) appears in this publication to facilitate discussion about people who have relatively mild cognitive limitations in their day-to-day functioning and who may require interventions and supports (Tymchuck, Lakin & Luckasson, 1999)" (President's Committee on Mental Retardation, 1999, p. 13).
- *Developmentally delayed*: "The 1997 Amendments to IDEA lets schools label children ages 3-9 as "developmentally delayed"" (President's Committee on Mental Retardation, 1999, p. 15).
- *Mild mental retardation* is used to describe a sub-set of those with *mental retardation*. (President's Committee on Mental Retardation, 1999).
- *Diminishing handicap* is an over-inclusive term. (President's Committee on Mental Retardation, 1999)
- *People with disabilities* is an over-inclusive term. (President's Committee on Mental Retardation, 1999)
- *Mild developmental disabilities* is an over-inclusive term used as a synonym of *mild cognitive limitations*. (President's Committee on Mental Retardation, 1999, p. 15)
- *Developmental disability* is used for this purpose: "Commissioners of MR/DD" (President's Committee On Mental Retardation, 1998, p. 3).
- *Mental deficiency* is not used for this purpose (President's Committee On Mental Retardation, 1998).
- *Down Syndrome* is used as an under-inclusive term (President's Committee On Mental Retardation, 1998, p 5).
- *Intellectual disability* is not used for this purpose (President's Committee On Mental Retardation, 1998).
- *Organic mental disorder* is not used for this purpose (President's Committee On Mental Retardation, 1998).
- *Multiple disabilities* is used as an over-inclusive term (President's Committee On Mental Retardation, 1998, p. 5).
- *Persons with the most significant disabilities* is used as an over-inclusive term (President's Committee On Mental Retardation, 1998, p. 9).
- *Severe mental retardation* is used to refer to a level of mental retardation (President's Committee On Mental Retardation, 1998, p. 14).

- *Disabilities/Disabled* are used as over-inclusive terms (President's Committee On Mental Retardation, 1998).
- *Developmental disability* is not used for this purpose (President's Committee On Mental Retardation, 1996).
- *Mental deficiency* is not used for this purpose (President's Committee On Mental Retardation, 1996).
- *Down Syndrome* is used as an under-inclusive term (President's Committee On Mental Retardation, 1996, p. 22).
- *Intellectual disability* is not used for this purpose (President's Committee On Mental Retardation, 1996).
- *Organic mental disorder* is not used for this purpose (President's Committee On Mental Retardation, 1996).
- *Fetal alcohol syndrome*: "Fetal alcohol syndrome, the leading known cause of mental retardation..."(President's Committee On Mental Retardation, 1996, p. 26).
- *People with disabilities* is used as an over-inclusive term (President's Committee On Mental Retardation, 1996).
- *People with mental retardation and related disabilities* is used as an over-inclusive phrase (President's Committee On Mental Retardation, 1996).
- *People with severe mental retardation* is used to refer to a sub-set of those with *mental retardation* (President's Committee On Mental Retardation, 1996).
- *Individuals with severe disabilities* is used as an over-inclusive term (President's Committee On Mental Retardation, 1996).
- *Physical or mental limitations* is used as an over-inclusive term (President's Committee On Mental Retardation, 1996).
- *Haemophilus influenza type b meningitis*: "...previously the leading cause of acquired mental retardation in the United States" (President's Committee On Mental Retardation, 1996, p 59-60).
- *Developmental disability* is used as an over-inclusive term (President's Committee On Mental Retardation, 1993).
- *Mental deficiency* is not used for this purpose (President's Committee On Mental Retardation, 1993).
- *Down Syndrome* is used as an under-inclusive term (President's Committee On Mental Retardation, 1993, p 4).
- *Intellectual disability* is not used for this purpose (President's Committee On Mental Retardation, 1993)..
- *Organic mental disorder* is not used for this purpose (President's Committee On Mental Retardation, 1993).
- *MRDD* includes: "...mental retardation, spinal cord injury, cerebral palsy, and learning disabilities..."(President's Committee On Mental Retardation, 1993, p 6).
- *Critical childhood disabilities* is an over-inclusive term (President's Committee On Mental Retardation, 1993).
- *Persons with disabilities, ... people with disabling conditions, ...disability, ...developmental disability* are over-inclusive terms (President's Committee On Mental Retardation, 1993, p 11).

- *Mental retardation and developmental disorders*: includes those with mental retardation and others who have developmental disorders (President’s Committee On Mental Retardation, 1993, p 12).
- *Retarded Intellectual Development* is used as an over-inclusive term (President’s Committee On Mental Retardation, 1993, p 13).
- *Handicapped or at-risk infants and preschoolers* is used as an over-inclusive term (President’s Committee On Mental Retardation, 1993).
- *Retarded* is used as a synonym of *mentally retarded* (President’s Committee On Mental Retardation, 1993).
- *Mild mental retardation* is used to refer to a sub-set of those with mental retardation (President’s Committee On Mental Retardation, 1993, p 16).
- “...*Children with disabilities, including mental retardation*” (President’s Committee On Mental Retardation, 1993, p 23).
- “*severely handicapped, medically-fragile children...*” is an over-inclusive term (President’s Committee On Mental Retardation, 1993, p 27).
- *Mental retardation and related disabilities* is an over-inclusive term (President’s Committee On Mental Retardation, 1993).
- “Mild Mental Retardation is roughly equivalent to what used to be referred to as the educational category of ‘educable’” (American Psychiatric Association, 1987, p. 32).
- “Moderate Mental Retardation is roughly equivalent to what used to be referred to as the educational category of ‘trainable’” (American Psychiatric Association, 1987, p. 32).
- “319.00 Unspecified Mental Retardation.
- This category should be used when there is a strong presumption of Mental Retardation but the person is untestable by standard intelligence tests. This may be the case when children, adolescents, or adults are too impaired or uncooperative to be tested. It may also be the case with infants when there is clinical judgement of significantly subaverage intellectual functioning, but the available tests, such as Bayley, Cattell, and others do not yield IQ values. In general, the younger the age, the more difficult it is to make a diagnosis of Mental Retardation, except for those with profound impairment.
- This category should not be used when the intellectual level is presumed to be above 70 (see V code for Borderline Intellectual Functioning, p. 359)” (American Psychiatric Association, 1987, p. 32).
- “Pervasive Developmental Disorders (AXIS II)” includes those “disorders frequently associated with a variety of other conditions (in most cases there is an associated diagnosis of Mental Retardation)” (American Psychiatric Association, 1987, p. 33).
- *Developmental disability* is not used for this purpose. (American Psychiatric Association, 1987).
- *Mental deficiency* is not used for this purpose (American Psychiatric Association, 1987).
- *Mental disability/handicap* is not used for this purpose (American Psychiatric Association, 1987).
- *Intellectual disability* is not used for this purpose (American Psychiatric Association, 1987).
- *Organic mental disorder* is not used for this purpose (American Psychiatric Association, 1987).
- *Down Syndrome* is not used for this purpose (American Psychiatric Association, 1987).

According to **Slosson Intelligence Test SITR**:

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TSS	Classification	School Accomplishment and Placement
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148 - Above	Very Superior	Gifted programs, college, graduate work
132 - 147	Superior	Gifted classes, college, graduate work
120 - 131	High	Gifted classes, college, graduate work
110 - 119	Above average	High school, and college
90 - 109	Average	High school, Junior college
80 - 89	Below average	Slow learner classes
69 - 79	Borderline M/H	Slow learner classes
52 - 68	Mild M/H	Classes for educable
36 - 51	Moderate M/H	Classes for Trainable
35 - Below	Severe/Profound M/H	Classes for Severe/Profound

- *Developmental disability* is not used.
- *Mental deficiency* is not used.
- *Down Syndrome* is not used.
- *Intellectual disability* is not used.
- *Organic mental disorder* is not used.
- Mentally handicapped (M/H) is used as a synonym of mental retardation.

According to The Vineland Adaptive Behavior Scale, Expanded Form Manual:

- Developmental disability is not used.
- mental deficiency is not used.
- Mental deficiency is not used except for AAMD (American Association on Mental Deficiency).
- Intellectual disability is not used.
- Organic mental disorder is not used.

According to the Columbia Mental Maturity Scale:

- mental ability is used as an over-inclusive term.
- developmental disability is not used.
- Mental deficiency is not used.
- Intellectual disability is not used.
- Organic mental disorder is not used.

According to Differential Ability Scales:

- Severe developmental disability is used (p. 33)
- Developmental disability is not used.
- Mental disability is not used.
- Intellectual disability is not used.
- organic mental disorder is not used.
- The terms severe or profound mental retardation, and severely retarded, and educable mentally retarded are used.
- "Special Populations" is used as an over-inclusive term.

According to McCarthy Scales of Children's Abilities:

Table 7

**General Cognitive Ability levels**

CGI	Descriptive Classification	Theoretical Percent	Actual Percent (MSCA Normative Sample)
130 and above	Very Superior	3.0	3.1
120 - 129	Superior	7.5	8.5
110 - 119	Bright Normal	16.0	15.9
90 - 109	Average	46.8	46.7
80 - 89	Dull Normal	16.0	15.7
70 - 79	Borderline	7.5	7.3
69 and below	Mentally Retarded	3.0	2.8 (p. 25)

- Developmental disability is not used.
- Mental deficiency is not used.
- Mental disability is not used.
- Intellectual disability is not used
- Organic mental disorder is not used.
- "extreme intellectual deviates" is used to refer to both "mentally retarded" and "very superior" children.

According to WRAT-R: Wide Range Achievement Test Administration Manual: (1984)

**“RATINGS OF STANDARD  
SCORES**

<b>Classification</b>	<b>Score Range</b>
Very Superior	130 and up
Superior	120 to 129
High Average	110 to 119
Average	90 to 109
Low Average	80 to 89
Borderline	70 to 79
Deficient	69 and below” (p. 29)

- Deficient is used instead of mental retardation.
- Mental deficiency is not used.
- Mental disability is not used.
- Intellectual disability is not used
- Organic mental disorder is not used.

According to the Kaufman Test of Educational Achievement:

<b>“Descriptive Category</b>	<b>Standard Score Range</b>
Lower Extreme	69 and below
Well Below Average	70 – 79
Below Average	80 – 89

Average	90 – 109
Above Average	110-119
Well Above Average	120-129
Upper Extreme	130 and above” (p. 69)

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- Mental deficiency is not used.
- Mental disability is not used.
- Intellectual disability is not used.
- Organic mental disorder is not used.
- "Lower extreme" is used instead of "mentally retarded".
- Mentally retarded is not used or defined.

According to Kaufman Assessment Battery for Children (K-ABC): (1983)

- Mental retardation is used.
- Educable Mentally Retarded (EMR) is used as an under-inclusive term.
- Trainable Mentally Retarded (TMR) is used as an under-inclusive term.
- Retarded youngsters is used as a synonym of mentally retarded (p11)
- Mental deficiency is not used
- mental disability is not used
- Intellectual disability is not used.

According to the Bayley Scales of Infant Development: Second Edition:

### **"Diagnosing Developmental Delay**

There is no universally accepted definition of developmental delay...Regardless of the criteria used, the BSID-II can provide relevant normative and developmental age level information to aid diagnosis of delay. It is not sound practice, however, to base a diagnostic decision solely on results of a single developmental evaluation. Other relevant background information such as medical and social history should be considered." (5)

- "The assessment of intelligence largely arose from a need on the part of educators to determine which children were suitable learners for the classroom, and which children were mentally deficient..." (p. 5)
- mentally deficient is used.
- mental disability is not used.
- Intellectual disability is not used.
- Organic mental disorder is not used.
- Developmental delay is used.

According to the Technical Manual, Stanford-Binet Intelligence Scale: Fourth Edition:  
"exceptional students" includes gifted, learning disabled, and mentally retarded. (p. 83)

- mentally deficient is not used.
- mental disability is not used.
- Intellectual disability is not used.
- Organic Mental Disorder is not used.
- Developmental delay is not used.

According to

“Did I Say That?” Articles and Commentary on the Try Another Way System:

- *Mental deficiency [mentally deficient]* is not used.
- *AAMD/ American Association on Mental Deficiency* is used (149 - 150, 208).
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used.
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used.
- *Organic mental disorder* is not used.
- *Retarded/retardation* is used as a synonym of *mental retardation* (pp. 46, 47, 49, 57, 62, 63, 64, 167, 209, 210, 211, 216, 217, 218, 219, 272, 273, 279, 281).
- *Educable mentally handicapped (EMH)* was used as a category of people allowed to drive in 1975 (302)
- *EMR, TMR*, are labels used in the school system (pp. 212, 208, 216).
- *EMR* is used (p. 217).
- *TMR* is used (p. 218).
- *Mental retardate* refers to those with *mental retardation* (p. 212).

According to

Testing Young Children: A reference Guide for Developmental, Psychoeducational, and Psychological Assessments:

- *Mental deficiency [mentally deficient]* is not used.
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* are not used except:
- *Mild mental handicap* is used as a synonym for *mild mental retardation* (p. 169).
- *Mildly mentally handicapped children* is used as a synonym for *mildly mentally retarded children* (p. 180).
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used.
- *Organic mental disorder* is not used.
- *Retardation* is used as a synonym of *mental retardation* (p. 168, p.200, p. 383).
- *Retarded* is used as a synonym of *mental retardation* (p. 15, p. 180).
- *Severely retarded* is used as a synonym for a degree of *mental retardation* (p.19, p. 182).
- *Organic pathology* is a subset of those with *mental retardation* (p. 23.)
- *Severely impaired re reliability on tests scores* is used as a synonym for *mental retardation* (p. 70) The term *mental retardation* is also used to refer to these individuals (p. 70).

According to:

Daniel, M. (1994). “A Review of the Differential Ability Scales. In R. J. Sternberg (Ed.), Encyclopedia of Human Intelligence, (pp. 350—354). New York, NY: Macmillan.

- *Mental deficiency [mentally deficient]* is not used.
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used.
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used.
- *Organic mental disorder* is not used.

According to:

World Health Organization. (1992). International Classification of Diseases: 10th Revision. Ann Arbor, MI: Commission on Professional and Hospital Activities. [ICD-10]

- *Mental deficiency [mentally deficient]* is not used.
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used.
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used.
- *Organic mental disorder* is not used.
- Mild mental retardation includes *feeble-mindedness, Mild mental subnormality*.(p. 369)
- Moderate mental retardation includes *moderate mental subnormality*. (p. 370)
- Severe mental retardation includes *severe mental subnormality*. (p. 370)
- Profound mental retardation includes *profound mental subnormality*. (p. 370)
- Unspecified mental retardation includes

*mental: deficiency NOS, subnormality NOS* .(p. 370)

According to:

American Educational Research Association, American Psychological Association & National Council on Measurement in Education (1999). Standards for Educational and Psychological Testing. Washington, DC: AERA.

- *Mental deficiency [mentally deficient]* is not used.
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used.
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used.
- *Organic mental disorder* is not used.
- *Handicaps that affect cognitive functioning* is an over-inclusive term of *mental retardation*. (p. 78)

According to:

Mackintosh, N.J. (1998). IQ and Human Intelligence. New York, NY: Oxford University Press.

- *Mental deficiency [mentally deficient]* is used for this purpose. (p. 119)
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used except for the following: *Mental retardation or handicap* is used as a synonym for *mental retardation*. (p. 176)
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used.
- *Intellectual retardation or competence* is used. (p. 177)
- *Organic mental disorder* is not used.
- *Retarded/retardation* are used as synonyms of *mentally retarded/mental retardation*. (pp. 14, 15, 21, 43, 177, 120).
- *Backward or retarded* is used as a synonym of *mentally retarded*. (p. 14)
- *Severely retarded or handicapped* refers to what used to be termed *idiots* or *imbeciles*. (p. 18)
- *Mildly retarded or handicapped* refers to what used to be termed *feeble-minded* or *morons*. (p. 18)
- *Pathological, severe retardation and subcultural or familial, mild retardation* are old terms used in 1985. (p. 18)

- *Feeble-mindedness* is an old term. (pp. 18, 19, 20 )

According to:

Barlow, C. F. (1978). Mental Retardation and Related Disorders. Philadelphia, PA: Davis

- *Mental deficiency [mentally deficient]* is used . (p. 1)
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used.
- *Intellectual disability [intellectually disabled]* is used. (p. 1)
- *[Intellectually impaired]* is not used.
- *Intellectual impairment* is used to refer to one area of “...symptomatic expressions of neurologic disease that may simulate mental retardation at certain stages of development...”(p. 3).
- *Intellectual subnormality* is used as a feature of *mental retardation*. (p. 1) It also is used in the following context: “Is delayed speech development due to intellectual subnormality...” (p. 4)
- *Gross deficiency of intelligence* is an over-inclusive term. (p.1)
- *Severely defective individuals* is an over-inclusive term (p. 1)
- *familial retardation*: “...major diagnostic groupings:
  - I. Hereditary issues (inborn metabolic errors, phacomatoses, familial retardation)” (p. 4)
- *Organic mental disorder* is not used.
- *Organically impaired nervous system*: “The problem in the inner city school system, and by implication among the economically less advantaged, is compounded by many additional youngsters who test in the borderline range. In part, the increased incidence is due to more numerous risk factors which lead to a mild organically impaired nervous system.” (p. 30)
- *Mental subnormality* is used in the same way *mental deficiency* is used as a synonym of *mental retardation*. (p. 1)
- *Retarded* is a synonym of *mental retardation*. (pp. 2, 30, 69)
- *Educable (IQ 50 to 75), trainable (IQ 25 to 50), severe (IQ less than 25)* are used to refer to subsets of *mental retardation* in education. (p. 2)
- *Intellectual handicap* is an over-inclusive term (p. 4)
- “children who may be regarded as *mildly brain damaged* or who have *mild brain dysfunction* frequently test in the borderline IQ range.” (p. 30).

According to:

Jongsma, A. and Slaggert, K. (2000). The Mental Retardation and Developmental Disability Treatment Planner. New York, NY: John Wiley & Sons.

- *Mental deficiency [mentally deficient]* is not used for this purpose.
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used for this purpose.
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used for this purpose.
- *Organic mental disorder* is not used for this purpose.

According to:

Das, J. P., Naglieri, J. A., & Kirby, J. R. (1994). Assessment of Cognitive Processes: The PASS Theory of Intelligence. Boston, MA: Allyn & Bacon.

- *Mental deficiency [mentally deficient]* is not used for this purpose.

- *Mental Disability/handicap [mentally disabled, mentally handicapped]* - *mentally handicapped* is used as a synonym for *mental retardation*. (pp. 133, 145, 159, 166, 176, 177)
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used for this purpose.
- *Organic mental disorder* is not used for this purpose.
- *Retarded* is a synonym of *mental retardation*. (pp. 143, 144, 145, 148, 165, 167, 178)
- *Non retarded* is the opposite to “retarded”. (p. 147)
- *Educable mentally retarded (EMR)* is used (p. 147).
- *Trainable mentally retarded* is used (p. 147).
- *Educable mentally retarded (EMR)* is used (pp. 176, 177).

According to:

Baroff, G.S. (1991). Developmental Disabilities: Psychosocial Aspects. Austin, TX: Pro-Ed.

- *Mental deficiency [mentally deficient]* is not used.
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used.
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used.
- *Organic mental disorder* is not used.
- *Retarded/Retardation* is a synonym of *mental retardation*. (pp. 56, 57, 58, 59, 60, 62, 63, 64, 65, 66, 67, 72, 73 & throughout the book)
- *Non retarded* is used as the opposite of *mentally retarded*. (p. 62)
- *Educable* is used to refer to those in the *mild retarded range*. (p. 56)
- *Trainable* is sometimes used to refer to those who are *moderately and severely retarded*. (p. 56)

According to:

Gardner, H. (1993). Frames of Mind: the Theory of Multiple Intelligences. New York, NY: Basic Books.

- *Retarded/Retardation* is a synonym of *mental retardation*. (pp. 15, 35, 63, 84, 121, 263, 188)
- *Mental deficiency [mentally deficient]* is not used.
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used.
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used.
- *Organic mental disorder* is not used.

According to:

Jensen, A. R. (1998). The G Factor: The Science of Mental Ability. Westport, CT: Praeger

### **Mental Retardation**

- *Mental deficiency [mentally deficient]* is not used.
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used.
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used.
- *Organic mental disorder* is not used.
- *Retarded/retardation* is used as a synonym of *mental retardation*. (pp. 226, 227, 336, 368, )
- *Nonretarded* refers to those who are not *retarded*. (pp. 227)
- *Retardates* is used as a synonym of *mental retardation*. (p. 368)

- *Familial retardation* is used. (p. 368)
- *Organic retardation* is used. (p. 368)

According to:

Jacobson, J. & Mulick, J. (Eds.). (1996). Manual of Diagnosis and Professional Practice in Mental Retardation. Washington, DC: American Psychological Association.

- *Mental deficiency [mentally deficient]* is not used.
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used.
- *Intellectual disability [intellectually disabled, intellectually impaired]* is used : “Understanding the Genesis and Nature of Intellectual Disability Associated with Specific Causes... As knowledge of specific causes of MR increases, opportunities arise to investigate correlations between specific causal characteristics and phenotypic expressions, including physical and psychological profiles...” (p. 69)
- *Organic mental disorder* is not used.
- *Retarded/retardation* is not used.

According to:

Grossman, H. J. (Ed.). (1973). Manual on Terminology and Classification in Mental Retardation (1973 rev.). Washington, DC: American Association on Mental Deficiency.

- *Retarded/Retardation* is a synonym of *mental retardation*.
- *Mental deficiency [mentally deficient]* is used:

#### “**mental deficiency**

*See mental retardation*; sometimes used to distinguish the group of persons having demonstrable organic basis for their intellectual deficits” (p. 148)

#### “**mental retardation**

significantly subaverage intellectual functioning existing concurrently with deficits in adaptive behavior, and manifested during the developmental period” (p. 148)

- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used.
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used.
- *Organic mental disorder* is not used.
- “*MILD* retardation is roughly equivalent to the educational term ‘educable;’ *moderate retardation* includes those individuals who are likely to fall into the educational category of ‘trainable;’ the severe group includes individuals sometimes known as ‘dependent retarded;’ individuals in the profound retardation level are among those sometimes called ‘life support’ level...” (p. 18)

According to:

Sattler, J. M. (1992). Assessment of Children 3rd Edition. San Diego, CA: Jerome M. Sattler, Publisher, Inc.

- *Mental deficiency [mentally deficient]* is not used.
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used except:
- *Mental deficiency* is used as follows: “tests of mental deficiency.” (p. 651)
- *Intellectual disability [intellectually disabled, intellectually impaired]* used.
- *Organic mental disorder* is not used.
- “*Organic type of mental retardation*” is one type of mental retardation.(pp. 649, 650)
- *Familial mental retardation* is used .(pp. 648-650)

- *Retarded/retardation* is used as a synonym of *mental retardation*.

According to:

Polloway, E. & Smith, J. (1987). "Current status of the Mild Mental Retardation Construct: Identification, Placement and Programs." In M. C. Wang, M.C. Reynolds & H. J. Wallberg (Eds.). The Handbook of Special Education: Research and Practice. New York, NY: Pergamon Press.

- *Retardation* is used as a synonym of *mental retardation* (p. 7).
- *Retarded* is used as a synonym of *mentally retarded* (pp. 8, 9).
- *Educable mentally retarded (EMR)* is used throughout as a sub-classification of *mentally retarded* (pp. 7, 9, 14, 15, 18)
- *High grade defectives* : "...Goddard coined the term 'moron, derived form a Greek word meaning foolish. His intention in using this label was to designate children and adults who were 'high grade defectives.'"(p. 8)
- *Mental deficiency [mentally deficient]* is not used.
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used.
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used.
- *Organic mental disorder* is not used.

According to:

Wechsler, D. (1989) Wechsler Preschool Primary Scale of Intelligence - Revised. San Antonio, TX: The Psychological Corporation.

- *Mental deficiency [mentally deficient]* is not used.
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used.
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used.
- *Organic mental disorder* is not used.
- *Intellectual deficiency*: "intellectual deficiency" in the school aged child. (p. 10)
- Diagnosis of intellectual deficiency (APA, 1985)." (p. 10)

According to:

Burgemeister, B. B., Blum, L. H. & Lorge, I. (1972). Columbia Mental Maturity Scale. San Antonio, TX: Psychological Corporation Harcourt Brace Jovanovich, Inc.  
(Guide for administering and interpreting)

- mental ability is used as an overinclusive term.
- developmental disability is not used.
- Mental deficiency is not used.
- Intellectual disability is not used.
- Organic mental disorder is not used.

According to:

Thorndike, R. L., Hagen, E. P., & Sattler, J. M. (1986). Technical Manual, Stanford-Binet Intelligence Scale: Fourth Edition. Chicago, IL: Riverside Publishing.

- "Table c.1 provides classifications for the composite score in the Fourth Edition. The terminology generally follows that used in Form L-M, except for the two lowest categories:

**Slow learner** replaces "Borderline Defective" (p. 127)

**Mentally Retarded** replaces "Mentally Defective." (p. 127)

“The score ranges, however, differ from those used in Form L-M. For example, in the Fourth Edition the **Average** classification includes from 89 to 110, whereas in Form L-M the scores ranged from 90 to 109. The changes in score ranges were made to conform more closely with current classification practices.” (p. 127)

“Table C.1  
Ability classifications  
COMPOSITE

STANDARD AGE SCORE	CLASSIFICATION
132 and above	Very Superior
121-131	Superior
111-120	High Average
89-110	Average
79 - 88	Low Average
68 - 78	Slow Learner
67 and below	Mentally Retarded” (p. 127)

According to:

Blatt, B. (1987). The Conquest of Mental Retardation. Austin, TX: PRO-ED.

- Developmental disability is not used for this purpose
- Mental deficiency is used to refer to The American Association on Mental Deficiency. (p. 11)
- Intellectual disability is not used for this purpose.
- Organic mental disorder is not used for this purpose.
- Cultural familial - classification by etiology (AAMD definition used).
- Since biblical times other terms have been used. (pp. 67-68)

According to:

Flanagan, D., Genshaft, J. & Harrison, P. (Eds.) (1997). Contemporary Intellectual Assessment: Theories, Tests and Issues. Mahwah, NJ: Lawrence Erlbaum Associates.

- *Mental deficiency [mentally deficient]* is not used.
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used.
- *Organic mental disorder* is not used.

According to:

Carroll, J. B. (1993). Human Cognitive Abilities: a Survey of Factor Analytic Studies. New York, NY: Cambridge University Press.

- *Mental deficiency [mentally deficient]* is not used.
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used.
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used.
- *Organic mental disorder* is not used.

According to:

Heber, R. F. (1961). “A Manual on Terminology and Classification in Mental Retardation (2nd Ed.).” Monograph Supplement to the American Journal of Mental Deficiency

- Medical classification:
- *mental retardation* due to ...(etiology/coexisting condition specified). (p. 55)
- Behavioral classification:

- *mental retardation* - “In accord with the concept of mental retardation as being characterized by subaverage intellectual functioning associated with deficits in adaptive behavior, the primary classification makes use of two dimensions: *Measured Intelligence* and *Adaptive Behavior*.” (p. 55)
- *Mental deficiency [mentally deficient]* is not used.
- *Deficiency, mental* “A term used as a synonym for mental retardation. Sometimes used in a more restricted sense to refer to those whose mental retardation is attributable to structural defect.” (p. 88)
- *Defective, mentally* “A term sometimes used as a synonym of mentally retarded. Also used to refer to those whose mental retardation is attributed to structural defect.” (p. 88)
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used.
- *Handicapped, mentally* “A term sometimes used as a synonym of mental retardation. Is also used to refer to a specific or segmental defect in intelligence or other aspect of behavior.” (p. 91)
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used.
- *Organic mental disorder* is not used. “Organic: Pertaining to the structure of organs.” (p. 94)

**According to:**

Borthwick-Duffy, S. A. & Eyman, R. K. (1990). “Who Are the Dually Diagnosed?” *American Journal on Mental Retardation*, 94, 586-595.

- *Mental retardation* is used throughout.
- *Retarded* is used. (p. 586)
- No other terms used.

**According to:**

Ellis, R. E., Woodley-Zanthos, P., Dulaney, C. L. & Palmer, R. L. (1989). “Automatic-Effort Processing and Cognitive Inertia in Persons with Mental Retardation.” *American Journal on Mental Retardation*, 93(4), 412-423.

**Definition**

mental retardation is not defined

- *retarded* is used as a synonym of mental retardation.
- *Mentally retarded* is used.
- No other terms used.

**According to:**

Healey, K. N. & Masterpasqua, F. (1992). “Interpersonal Cognitive Problem Solving Among Children with Mild Mental Retardation.” *American Journal on Mental Retardation*, 96, 4, 367-372.

**Definition**

mental retardation is not defined

- *Mental retardation* is used throughout.
- *Retardation* not used as a synonym.
- No other terms used.

**According to:**

Greenspan, S. (1994). “Review of the 1992 AAMR Manual.” *American Journal of Mental Retardation*, 98, 544-549.

**Definition:**

- *Developmental disabilities* is used to show its influence - “The current federal functional definition of *developmental disabilities* (i.e., 3 out of 8 areas of deficit), [is] an approach that obviously had some influence over the committee’s adoption of the (2 out of 10) adaptive skills limitation criteria.” (p. 546)

**According to:**

Reiss, S. (1994). "Issues in Defining Mental Retardation." American Journal on Mental Retardation, 99(1), 1-7.

- *Mental retardation* is used.

**According to:**

Siperstein, G. N. (1992). "Social Competence: An Important Construct in Mental Retardation." American Journal on Mental Retardation, 96(4), iii-iv.

- *mental retardation* is used.
- No other terms used.

**According to:**

Zigler, E., Balla, D. & Hodapp, R. (1984). On the Definition and Classification of Mental Retardation. American Journal of Mental Deficiency, 89, 215-230.

- "The lack of a soundly established definition also hinders classification *within* mental retardation." (215) "...individuals labeled 'mentally retarded' might be assigned... to two distinct groups: those suffering from known organic defects and the much larger mildly retarded group who evidence no organic pathology." (p. 215)
- *Mental retardation* is used.
- *Retarded* is used as a synonym. (pp. 215, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228)
- *Familial* and *organic* are subcategories of mental retardation. (p. 217) *organic*. (p. 218) *familial*. (p. 221)
- *organically retarded*. (pp. 220, 221)
- *Familially retarded* .(p. 220)
- *Organically impaired children*. (p. 220)
- *Familial group*. (pp. 220, 222)
- *Organic group*. (p. 222)
- *Trainable-educable* (p. 222)

**"TABLE 3  
Past and Present terms to describe Retarded persons**

Organic	Familial
Organically involved	Cultural-familial retarded due to Psychosocial disadvantage
Organismically impaired	Nonorganically involved Lower portion of the polygenic curve of intelligence
Moderate, severe and profound	Mild
Exogenous	Endogenous Garden variety Feeble minded
Imbecile, idiot	Moron
Trainable and subtrainable	Educable" (p. 223)

**According to:**

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 1, Number 1, 1995

- *Mental retardation* is used.
- *Developmental Disabilities* includes those with mental retardation.
- *Mental deficiency [mentally deficient]* is not used.

- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used.
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used.
- *Organic mental disorder* is not used.

## Mental Retardation and Developmental Disabilities Research Reviews

Volume 1, Number 2, 1995

- *Retarded* is used as a synonym in a quote (95).
- *Retardation* is used as a synonym.(99, 100)
- *Developmental Disabilities* includes those with mental retardation.
- *Mental retardation and developmental disabilities* is used. MRDD population is used.
- *Mental deficiency [mentally deficient]* is not used.
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used.
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used.
- *Organic mental disorder* is not used.

## Mental Retardation and Developmental Disabilities Research Reviews

Volume 1, Number 3, 1995

- *Mental retardation* is used.
- *Developmental Disabilities* includes those with mental retardation.
- *Mental retardation and developmental disabilities* is used. MRDD is used.
- *Mental deficiency [mentally deficient]* is not used.
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used.
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used.
- *Organic mental disorder* is not used.
- *Down syndrome* sometimes associated with *mental retardation*; and *Alzheimer's Disease* occurs after 4<sup>th</sup> decade.

## Mental Retardation and Developmental Disabilities Research Reviews

Volume 1, Number 4, 1995

- *Mental retardation* is used.
- *Mental retardation and developmental disabilities* is used.
- *Mental deficiency [mentally deficient]* is not used.
- *Mental Disability/handicap [mentally disabled, mentally handicapped]* is not used.
- *Intellectual disability [intellectually disabled, intellectually impaired]* is not used.
- *Organic mental disorder* is not used.
- *Fragile X syndrome* “Fragile X syndrome, the leading known inherited cause of mental retardation and developmental disabilities...” (p. 238)
- *Fragile X syndrome* “Fragile X syndrome, the most common form of inherited mental retardation...” (pp. 286, 245, 250)
- *Fragile X syndrome* “Fragile X syndrome, the leading known cause of heritable mental retardation...” (p. 269)

**According to:**

Mental Retardation and Developmental Disabilities Research Reviews:

- *Mental retardation* and *developmental disabilities* are used. Sometimes these terms are interchangeable.
- *Mental retardation* is a type of developmental disability.

## Mental Retardation and Developmental Disabilities Research Reviews

Volume 5, Number 4, 1999

- *Mental retardation* is used (pp. 253, 270, 305, 322, 348)
- *Intellectual disability* is used (p. 264) to refer to a population with intellectual disabilities.

- *MRDD population* is used. (p. 251) and throughout.

**According to:**

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 6, Number 1, 2000

- *Mental retardation* is used. (pp. 41, 45)

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 6, Number 2, 2000

- *Mental retardation...Alzheimer's disease...Down Syndrome.* (p. 84)
- *Mental retardation.* (pp. 99, 104)
- *Fragile x syndrome* refers to itself. (p. 96)

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 7, Number 2, 2001

- *Mental retardation* is used. (pp. 75, 115)
- *MR/DD (mental retardation/developmental disabilities)* is used. (pp. 105-113)
- *Mental retardation or developmental disabilities* is used. (pp. 115-120)
- *Developmental disabilities* is used as a keyword. (p. 122)

Mental Retardation and Developmental Disabilities Research Reviews  
Volume 7, Number 3, 2001

- *Mental retardation* is used (p. 167)

**According to:**

Baird, P. A. & Sadovnick, A. D. (1985). "Mental Retardation in Over Half-a-Million Conservative Livebirths: An Epidemiological Study." *American Journal of Mental Deficiency*, 89, 323-330.

- "Mental retardation is the single largest category of life-long handicaps affecting populations in 'developed' countries." (p. 323)
- *Mental retardation* is used. (pp. 323, 326, 327, 328)
- *Retarded* is used as a synonym. (p. 323, 326, 327, 328)
- No other terms used.

**According to:**

Baumeister, A. (1987). "Mental Retardation: Some Conceptions and Dilemmas." *American Psychologist*, 42, 796-800.

- *Mental retardation* is used.
- *Retarded* is used as a synonym (p. 799)

**According to:**

Bogdan, R. & Biklen, D. (1977). "Handicapism." *Social Policy*, 7(4), 14-19.

- *Mentally retarded* is used.
- *Handicapism* is over-inclusive of *mentally retarded*. (p. 14)
- *Retarded* is a synonym. (pp. 15, 17, 18)
- *Retardes* is used. (p. 16)

**According to:**

Bogdan, R. & Taylor, S. J. (1989). "Relationships with Severely Disabled People: the Social Construction of Humanness." *Social Problems*, 36(2), 135-148.

- *Mental retardation/mentally retarded* is used
- *Retarded* is used as a synonym (138,139, 140, 141,142, 144, 145)
- "severely and profoundly retarded individuals in our study have often been called 'vegetables'..." (138)

- *Developmentally disabled* is used. (142)

**According to:**

Leiter, R. G. (1940). The Leiter International Performance Scale, Santa Barbara, CA: Santa Barbara State College Press.

- No “other terms” are used.

**According to:**

Russell, A. (1985). “The Mentally Retarded, Emotionally Disturbed Child and Adolescent.” In M. Sigman (Ed.), Children with Emotional Disorder and Developmental Disabilities: Assessment and Treatment (pp. 111-136). New York, NY: Grune & Stratton

- *Mentally retarded/mental retardation* is used.
- *Retarded* is used as a synonym.
- *Organic impairments*: “A proportionately large number of these children would have IQ’s below 50 and also have diagnosable organic impairments. This simply reflects that the more severe forms of retardation are often associated with neurologic and physical handicaps and are identified the earliest...”

In addition to the fact that tested intelligence may change, it is a striking phenomenon that children and adolescents classified as mildly mentally retarded and without organic disease, predominantly come from disadvantaged backgrounds (Zigler, 1967). This population has been referred to as the familial retarded or the sociocultural retarded...” (115-116)

**According to:**

Batshaw, M. L., & Perret, Y. M. (1992). Children with Disabilities. Baltimore, MD: Paul H. Brookes.

- No “other terms” used.

**According to:**

Richardson, S.A. & Koller, H. (1996). Twenty-Two Years: Causes and Consequences of Mental Retardation. Cambridge, MA: Harvard University Press.

- No “other terms” used.

**According to:**

Shannon, J. (2000). Mental Retardation Sourcebook. Detroit, MI: Omnigraphics, Inc.

- No terms other than *mental retardation* used.

**According to:**

Edgerton, R. B, Lloyd, B. and Cole, M. (Eds.). (1979). Mental Retardation. Cambridge, MA: Harvard University Press.

- “In the past an *idiot* was someone with an IQ of less than 30, an *imbecile* had an IQ of 30 to 50, and a *moron* an IQ of 50 to 70. These terms have been replaced throughout much of the English-speaking world by the AAMD system in which there are these categories: mild retardation (IQ 55-69), moderate retardation (IQ 40-54), severe retardation (IQ 25-39), and profound retardation (IQ less than 25). While the World Health Organization has recommended the use of the terms *mild subnormality*, *moderate subnormality*, and *severe subnormality*, their proposal has not been widely accepted.” (p. 3)
- “...it is practicable to refer to two basic types: clinical and sociocultural... Clinical retardation can usually be shown to have concomitant organic deficits of a neurological, metabolic, or physiological sort...” In “Sociocultural retardation... such children are most likely to have been born to parents who are economically, socially, and educationally disadvantaged...” (p. 4)
- *Mental deficiency* is not used.
- *Mental disability* is not used.
- *Intellectual disability* is not used.
- *Organic mental disorder* is not used.

- *Retardation* is used as a synonym of mental retardation.

**According to:**

Braddock, D., Hemp, R., Bachelder, L., & Fujiura, G. (1998). The State of the States in Developmental Disabilities (5th ed.). Washington, DC: AAMR.

- *Mental retardation and developmental disabilities* is used.
- *Mental deficiency* is not used.
- *Mental disability* is not used.
- *Intellectual disability* is not used.
- *Organic mental disorder* is not used.
- *Retardation* is used as a synonym of mental retardation.

**According to:**

Braddock, D., Hemp, R., Bachelder, L., & Fujiura, G. (1995). The State of the States in Developmental Disabilities (4th ed.). Washington, DC: AAMR.

- MR/DD is used (p. 4)
- *Mental retardation/developmental disabilities* is used.

**According to:**

Bray, N. (Ed.). (1997). International Review of Research in Mental Retardation, Volume 21. Burlington, MA: Academic Press.

- “Mentally retarded individuals, *see also* Developmentally disabled; Intellectually disabled” (255)
- **Developmentally Disabled definition:**  
“The classification of developmental disabilities includes the presence of a mental or physical impairment with onset prior to age 22 and a continuance throughout the individuals’ lifetime. Furthermore, this mental or physical impairment results in limitations in self-care, language, learning, mobility, and independent living (J. Jacobson, 1991).” (p. 187)
- **Intellectual Disabilities definition:**  
“The term *intellectual disabilities* is employed in this chapter to refer to people who have an IQ more than two standard deviations below the mean and who have social functioning deficits in addition. The term is preferred to ‘*mental retardation*’ (used widely in the United States) because it is less pejorative, and it is preferred to the term ‘*learning disabilities*’ (now gaining broad acceptance in the UK), since it is less likely to be confused with specific learning disabilities, particularly in the United States.” (p. 33n)

**According to:**

Bray, N. (Ed.). (1996). International Review of Research in Mental Retardation, Volume 20. Burlington, MA: Academic Press.

- “Supported employment is characterized in the U.S. Developmental Disabilities Act of 1984 as (a) being for persons who, because of their disabilities, are only likely to achieve competitive employment at or above minimum wage if they have ongoing support, (b) occurring particularly in work sites where people without disabilities are employed; and (c) requiring support through supervision, training, and transportation to sustain paid work...”
- Handicaps, types “*Disability* covers such a wide range of definitions that it is difficult to draw from studies that used a mixed bag of conditions to compare with mere absence of disability.” (p. 139)
- “The assumption cannot be made that Down’s syndrome is in any way ‘pure’ uncomplicated mental retardation.” (p. 139)
- *Intellectual disability* is used as an old term in some quotes.

**According to:**

Glidden, L. (Ed.) (2001). International Review of Research in Mental Retardation, Volume 24. Burlington, MA: Academic Press.

- *Mentally retarded*, and *retarded* are used.
- *Intellectual disabilities* is used.
- “Organic etiology and MR” (p. 364)
- “The distinctions between persons with familial and organic retardation led to a call for the study of homogeneous groups of persons with familial retardation so as not to confound the data on with that from persons whose functioning may be impaired as a result of biological damage , independent of mental retardation... The first significant modification of the developmental approach was the study of groups of persons who are homogeneous with regard to the organic etiology of mental retardation.” (p. 305)

<sup>1</sup>Other terms to describe the same population or characteristics in these contexts. E.g., “mental deficiency,” “mental disability,” “developmental disability”, “intellectual disability.”

## Research Summary: B

### “Mental Retardation” Terminology Used in Other Countries

This *Research Summary* addresses the fourth primary area of policy research concerning the use of the term “mental retardation” and of alternative terms (as identified in the Final Research Bibliography) to compare the term “mental retardation” with the terminology used in other countries and by international organizations to describe the same population and characteristics.

The most frequently used definition referred to is the International Classification of Disorders (ICD) which correlates with the Diagnostic and Statistical Manual of Mental Disorders.<sup>1</sup>

Country and/or Language	Term
Australia	Intellectual disability <sup>2</sup>
Canada (English, French)	Mental deficiency, Intellectual handicap <sup>3</sup>
England	Learning disability, Intellectual disability, Developmental disability <sup>4</sup>
France	Mental deficiency, Mental apraxia <sup>5</sup>
Germany	Mental handicap, Mental retardation <sup>6</sup>
Italy	Mental delay, Mentally deficient <sup>7</sup>
Estonia	Mental retardation <sup>8</sup>
Puerto Rico	Mentally slowed down <sup>9</sup>
Spain	Mental delay <sup>10</sup>

International Organization	Term
United Nations	Developmentally delayed, Mental deficiency, Cognitive disability, Mentally retarded, Intellectual disability, Feeble minded, Moron, Idiot <sup>11</sup>
World Health Organization (WHO)	Learning disability, Intellectual disability, Mental deficiency, Developmental disability, Mental retardation <sup>12</sup>
International Association for the Scientific Study of Intellectual Disabilities (IASSID)	Intellectual disabilities <sup>13</sup>
Organization for Economic Cooperation and Development (OECD)	Disability, Disabled people, Mental Retardation <sup>14</sup>
Inclusion International	Intellectual Disabilities <sup>15</sup>

- <sup>1</sup> American Psychiatric Association. (2000). Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision. Washington, DC: Author [DSM-IV-TR].
- American Psychiatric Association. (1994). Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition. Washington, DC: Author [DSM-IV].
- American Psychiatric Association. (1987). Diagnostic and Statistical Manual of Mental Disorders, Third Edition, Revised. Washington, DC: Author [DSM-III-R].
- American Psychiatric Association. (1980). Diagnostic and Statistical Manual of Mental Disorders, Third Edition. Washington, DC: Author [DSM-III].
- World Health Organization. (1992). International Classification of Diseases: 10th Revision. Ann Arbor, MI: Commission on Professional and Hospital Activities. [ICD-10]
- <sup>2</sup> Activ Foundation, Supporting People With Intellectual Disability Since 1951.
- <sup>3</sup> Sector of Communication of Canada Communication
- <sup>4</sup> Journal of Intellectual and Developmental Disability, Taylor & Francis Group, London, UK.
- <sup>5</sup> Descripteurs français du MeSH en Psychiatrie et Psychologie, 1996.
- <sup>6</sup> Soziale Informationsverarbeitung bei leicht geistig behinderten Kindern, Leffert und Superstein, Ruhr-Universität, Bochum, 1996.
- <sup>7</sup> Istituti per il raggiungimento del potenziale umano Europa, Domande e risposte sui bambini cerebrali.
- <sup>8</sup> Eripedagoogika osakond, Special Education in Estonia, 1998.
- <sup>9</sup> Editorial Plaza Mayor, Inc., Rios Piedras, PR. <http://www.editorialplazamayor.com/>
- <sup>10</sup> Declaracion de los Derechos del Retrasado Mental, Proclamada por las Asamblea General en su resolucion 2856 (XXVI), de 20 de diciembre de 1971.
- <sup>11</sup> United Nations, <http://www.un.org/search/>
- <sup>12</sup> World Health Organization, <http://www.who.int/library/database/index.en.shtml>
- <sup>13</sup> IASSID, <http://www.iassid.org/>
- <sup>14</sup> OECD, <http://www.oecd.org/els/stats.htm>
- <sup>15</sup> Inclusion International, <http://www.inclusion-international.org/index.htm>

## Research Summary: C

### To What Extent is the Label “Mentally Retarded” Viewed as Pejorative

This Research Summary addresses the fifth primary area of policy research concerning the extent to which the label “mentally retarded” is viewed as pejorative by the general culture and media, by service professionals and by consumers and their families.

#### Conclusions

Although there are no available scientifically conducted survey data available, the term “mental retardation” is viewed negatively throughout the majority of the general culture and media, by service professionals, and by consumers and their families. Many persons with disabilities conclude that the burdens of the impairment are only aggravated with the negative perception of the terms that are used to label them.<sup>1</sup>

#### **Why is the term mental retardation offensive?**

Part of the answer lies in today's popular culture. Intelligence is esteemed as “good” and a characteristic that every individual strives to achieve. To be labeled intelligent is regarded as “flattering.” Undoubtedly, individuals would prefer to be viewed in those terms rather than as “slow,” “stupid”—an especially denigrating epithet – as “retarded.” “*Retard*,” the abbreviated version of retarded, is a common expression of derision among today's youth. It is no surprise, then, that those who bear this diagnostic label, and understand its stigmatizing quality, wish to avoid it.<sup>2</sup>

Words such as idiot, imbecile, feeble-minded, moron, and defective are today offensive, yet not more than thirty years ago some of these terms were used by professionals to describe individuals with mental retardation. At various points, these nouns began to be separated into hierarchies: defectives became mental defectives, imbeciles became high-grade and low-grade imbeciles, morons became higher-functioning mentally retarded. This still exists today with mild, moderate, severe, and profound “levels” of mental retardation. The way the population is referred to has also changed. Previously, “mentally retarded persons” was used and now the preferred description is persons with mental retardation and, in some circles, persons with developmental disabilities or persons specially challenged. While the current labels appear more benign, too often they are used to hide from to avoid the appearance of offense in ways that the old terms did not permit.<sup>3</sup>

History suggests that “retarded” is by no means the only word that carries these negative attributes. It appears that whatever term is chosen to describe this specific population results in a negative connotation. It was true for the original terms idiot, imbecile, and moron and continues through present day. Schools have used different terms to label children with mental retardation. “Developmental disability” and “special needs” are terms that have been used to replace the term mental retardation. It was only a matter of time before the new terms developed a negative connotation.

#### **Why is mental retardation not the appropriate term?**

Scholars have debated what the actual term “retarded” means, how many and who should fit into the category. The determination of who is mentally retarded depends on where we draw the line or set the cut-off point on tests and scales. The cut-off point is arbitrary. Once the line is drawn, however, people are divided into two groups – the ‘normal’ and the ‘retarded.’ Which a person is depends on performance on standardized tests.<sup>4</sup> The classification of people as mentally retarded depends on organizational and societal values, beliefs, and processes. A person may be mentally retarded at some times or in some situations but not in others.<sup>5</sup>

#### **Possible alternative terms?**

In the naming process, discussion has focused on the stigma associated with the term mental retardation, the increasing rejection of the term by people with the disability and their families, and a desire in the field to use the most appropriate term possible.<sup>6</sup> The quest for a more positive alternative must begin with the acknowledgment that mental retardation is a disability of functioning ability instead of only a number received from an IQ test.

What are the essential ingredients of any term that should replace the current one? There are at least two possibilities. First and foremost, a new diagnostic label should communicate the nature of the disability.

Second, if possible, the suggested designation should lead to the disability to be viewed similarly with other disabilities that share common characteristics especially when those other conditions are viewed less negatively. Instead of a blanket labeling term, individuals should have labels that are descriptive of their conditions.<sup>7</sup>

Whether a name is a new term, a new application of an old term, or a modification of an existing concept, its likelihood of success is enhanced if it satisfies certain requirements. In naming, a term should be selected that is specific and consistent. The term should refer to a single entity and permit differentiation from other entities. That is, the term should refer to this and nothing else. The specificity of the term will increase consistent application and facilitate communication between individuals, disciplines, and societies.<sup>8</sup>

Mercer's (*Labeling the Mentally Retarded*, 1973) research findings suggest that individuals are labeled mentally retarded as a function of their performance in social situations. She advocates a more conservative definition of mental retardation, one that would make the measurement of adaptive behavior more practical. According to her view, multiple norm frameworks must be developed to describe adequately children from different sociocultural settings. That is, children must be described (and labeled, if necessary) in relation to their own social and cultural background, without pre-judging that background as "deviant" or "deficient." Mercer also recommends that the identification and diagnosis of mental retardation be based on data that include the children's competencies as well as their deficits.<sup>9</sup>

New terms often assume over time the negative connotations of the words they replaced. As stated above, alternative terms in school were soon derogatory labels. Yet another example is a school district, aware of the detrimental effects of labeling children "mentally retarded," began placing these children in an educational program designed to teach language, arithmetic, and reading directly. A series of commercial programs produced by Science Research Associates, DISTAR (Direct Instructional Systems for Teaching Arithmetic and Reading), was used. Before half the year was over, a group of concerned citizens asked that the program be abandoned because DISTAR was for "dumb" kids, and children not enrolled in DISTAR classes were making of the DISTAR children by yelling "DISTAR, DISTAR" at them at recess. It may be impossible to find acceptable terms and useful definitions without proper education and increased understanding of persons who are intellectually disabled.<sup>10</sup> If this problem cannot be solved, it may be necessary to change terms periodically once they have taken on destructive connotations. No one change may yield a permanent solution to the problem.

Other definitional efforts, which are alternatives to the AAMR definition, have arisen in recent times. In great part, this has occurred because of dissatisfaction with the 1992 AAMR definition and classification guidelines. Smith (1997) points out that various members within the AAMR differed greatly in their opinions of the revised definition. The most critical attacks on the AAMR definition have been waged by Greenspan (1994, 1997), Jacobson and Mullick (1996), and MacMillan and his colleagues (1995). Concerns have focused on the following aspects of the definition: the IQ cutoff level, the adaptive skills areas, and the levels of needed supports.<sup>11</sup>

Proponents of a new definition and term still use elements of the AAMR definition (supports, range of settings) while adding an emphasis on social competence. Specifically, the term learning difficulties is chosen instead of other synonyms such as mental handicap, mental impairment, mental retardation, or learning disabilities because it is the term preferred by many in the British self-advocacy movement. As one self-advocate stated: "if you put 'people with learning difficulties,' then they know that people want to learn and to be taught how to do things."<sup>12</sup>

In conclusion, perhaps the strongest indictment of the phrase "mental retardation" lies not in the logical confusion and conceptual vagueness, but in its negative effects on people. While mental retardation is assumed to be a neutral, value-free concept, to some it implies moral inferiority as well as intellectual deficiency. "Retarded" is a demeaning and stigmatizing label. Labels like "retarded" have a dramatic effect on those who use them as well as on those to whom they are applied.<sup>13</sup> In the longer term, the goal should not be just to change the term, but to find ways to change the public's perception of the people who given this label.

- <sup>1</sup> General Learning Disorder: A New Designation for Mental Retardation, George S. Baroff, *Mental Retardation*, February 1999.
- <sup>2</sup> General Learning Disorder: A New Designation for Mental Retardation, George S. Baroff, *Mental Retardation*, February 1999. (pg. 68)
- <sup>3</sup> *Inventing the Feeble Mind: A History of Mental Retardation in the United States*, James W. Trent, Jr., University of California Press, 1994.
- <sup>4</sup> *The Social Meaning of Mental Retardation: Two Life Stories*, Robert Bogdan, Steven J. Taylor, 1994, Teachers College Press, New York, NY. (pg. 10)
- <sup>5</sup> *The Social Meaning of Mental Retardation: Two Life Stories*, Robert Bogdan, Steven J. Taylor, 1994, Teachers College Press, New York, NY. (pg. 8)
- <sup>6</sup> Naming, Defining, and Classifying in Mental Retardation, Ruth Luckasson and Alya Reeve, *Mental Retardation*, Volume 39, Number 1: 47-52, February 2001. (pg. 47)
- <sup>7</sup> General Learning Disorder: A New Designation for Mental Retardation, George S. Baroff, *Mental Retardation*, February 1999.
- <sup>8</sup> Naming, Defining, and Classifying in Mental Retardation, Ruth Luckasson and Alya Reeve, *Mental Retardation*, Volume 39, Number 1: 47-52, February 2001. (pg. 48)
- <sup>9</sup> *Mental Retardation*, Sixth Edition, Mary Beirne-Smith, Richard F. Ittenbach, James R. Patton. (pg. 42)
- <sup>10</sup> *Mental Retardation*, Sixth Edition, Mary Beirne-Smith, Richard F. Ittenbach, James R. Patton. (pg. 44)
- <sup>11</sup> *Mental Retardation*, Sixth Edition, Mary Beirne-Smith, Richard F. Ittenbach, James R. Patton.
- <sup>12</sup> How Do You Understand “Learning Difficulties”? Towards a Social Theory of Impairment, Dan Goodley and Mark Rapley, *Mental Retardation*, Volume 39, Number 3: 229-232, June 2001. (pg. 229)
- <sup>13</sup> *The Social Meaning of Mental Retardation: Two Life Stories*, Robert Bogdan, Steven J. Taylor, 1994, Teachers College Press, New York, NY. (pg. 4)

## **Research Summary: D**

### **Determination of Program Eligibility**

This *Research Summary* addresses the second primary area of policy research concerning the use of the term “mental retardation” and of alternative terms (as identified in the Final Research Bibliography) to determine the eligibility of individuals for benefits and/or services under important Federal and State child or adult service programs. Specifically, in the context of these programs, it seeks to answer three important policy research questions:

- To what extent is a diagnosis of “mental retardation” currently used?
- To what extent has the use of alternative terms<sup>1</sup> for determining eligibility been permitted or mandated?
- Over the last two decades, what policy shifts have occurred in the use and definition of these terms, and what factors appear to have influenced these shifts?

### **Conclusions**

Project staff has investigated the eligibility services of persons with “mental retardation” for benefits and/or services under the following programs: (1) education programs funded under the IDEA; (2) training programs funded under the Workforce Investment Act, including the Vocational Rehabilitation program; (3) the SSI and DI cash assistance programs operated by SSA; (4) the Medicaid HCBS Waiver program operated by DHHS; (5) State special education programs; and (6) State general assistance programs.

With respect to the first policy research question being investigated:

- Within the Federal programs reviewed, a diagnosis of *mental retardation* is currently used to determine under the IDEA, SSI, SSDI and Medicaid HCBS Waiver programs. A diagnosis of “mental retardation” is currently used by approximately half of the States in determining eligibility for special education programs including programs receiving IDEA financial support. Such a diagnosis is used in only one state to determine eligibility for general assistance.
- The same definition of “mental retardation” is currently used to determine eligibility under the SSI, SSDI and Medicaid HCBS Waiver programs. A different definition is used under the IDEA program. Of the 26 States that have elected to use a diagnosis of *mental retardation* for purposes of State special education programs, 15 have elected to use the IDEA 97 definition. Most of the remaining states have used a very similar definition but 4 have adopted a significantly different definition.

With respect to the second policy research question being investigated:

- The use of *alternative terms* for determining eligibility has not been mandated within any of the Federal or State programs studied but has been permitted within the operation of State special education programs receiving IDEA financial support.
- For the purposes of determining eligibility for State special education programs, 25 states have adopted an *alternative term*. The most popular alternative term has been *mental disability* (32%) but there is no clear cut consensus.
- Of the States that have adopted an *alternative term* for determining eligibility for State special education, 7 have used the IDEA 97 regulatory definition of “mental retardation” and only 2 of the remaining states appear to have used definitions that differ significantly from that IDEA definition.
- Currently, 36 states have adopted the term “developmentally delayed” as a new special education eligibility category, an option created by the IDEA 97 legislation.

With respect to the third policy research question being investigated:

- Within the Federal programs studied, the only discernible policy shift over the last two decades in the use of the term *mental retardation* and of *alternative terms*, has been the addition within IDEA 97 of the eligibility category of *developmentally delayed*.
- Within the operation of State special education programs, there has been a discernible shift over the last two decades away from the use of the term “mental retardation” but there is no clear pattern as to which alternative term appears preferable.
- Opposition on the part of both parent/advocates and some professionals to the use of the term “mental retardation” appears to have influenced both of these shifts.

### **Definition and Scope**

As described in detail in the *Final Research Bibliography*, while the terms “mental retardation,” “mentally retarded” and “retarded” occur within structure of some government programs, other terms are frequently used to identify individuals with the same or similar characteristics. The terms that have been identified as being synonymous (or roughly synonymous) to the term “mental retardation” are: *mental deficiency*; *mental disability or handicap*; *intellectual disability*; and *organic mental disorder*. While over-inclusive (i.e., it includes all persons with mental retardation along with others), the terms “*developmental disability*” and “*developmental delay*” have also been identified as “alternative terms” for purpose of project research efforts.

Eligibility for benefits and/or services under each of the following Federal, Federal/State and State-funded and administered programs has been investigated:

- (1) Early childhood education and elementary and secondary special education programs funded by the U.S. Department of Education (ED) under the IDEA;<sup>2</sup>
- (2) Training programs under the Workforce Investment Act,<sup>3</sup> including the Vocational Rehabilitation program<sup>4</sup> funded by the U.S. Departments of Labor (DOL) and Health and Human Services (DHHS);
- (3) The Supplemental Security Income<sup>5</sup> and Social Security Disability Insurance programs administered by the Social Security Administration (SSA);<sup>6</sup>
- (4) The Medicaid Home and Community-Based Services (HCBS) waiver program administered by DHHS;<sup>7</sup>
- (5) State special education programs; and
- (6) State general assistance programs.<sup>8</sup>

### **Findings**

Findings regarding the current use (and related trends) of a diagnosis of “mental retardation” and/or of alternative terms for determining eligibility for benefits and/or services under specific programs are presented separately below.

#### **(1) IDEA Education Programs**

ED’s Office of Special Education and Rehabilitation Services administers programs under the *Individuals with Disability Education Act Amendments of 1997* (IDEA 97), a law that ensures the provision of special education and related services to eligible children with disabilities. Part B of the Act addresses the duty to provide a free appropriate public education to children with disabilities enrolled in public and private elementary and secondary schools; Part C focuses on the establishment and operation of early intervention programs for infants and toddlers with disabilities.

#### **USE OF THE TERM “MENTAL RETARDATION”**

The term “mental retardation” occurs only once within Part B of IDEA 97. Section 602(3)(A) of IDEA 97 defines a “child with a disability” to mean: “a child --(i) with mental retardation...and (ii) who, by reason

thereof, needs special education and related services.<sup>9</sup> The IDEA 97 Part B Regulation<sup>10</sup> defines the term “child with a disability” to mean “a child evaluated in accordance with §§ 300.530–300.536 as having *mental retardation* ..., and who, by reason thereof, needs special education and related services,”<sup>11</sup> and define “*mental retardation*” to mean “significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child’s educational performance.”<sup>12</sup>

The term “*mental retardation*” is also used in two other definitions incorporated in the IDEA 97 Part B Regulation. First, in the definition of the term “multiple disabilities,” “*mental retardation*” occurs as one of concomitant impairments used as examples:

*Multiple disabilities* means concomitant impairments (such as mental retardation-blindness, mental retardation-orthopedic impairment, etc.), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments.<sup>13</sup>

In contrast, the term “*mental retardation*” is used within the definition of “specific learning disability” as an example of what is not included within the definition:

“*Specific learning disability* is defined as follows:...(ii) *Disorders not included*. The term does not include learning problems that are primarily the result of ...*mental retardation*, ...”<sup>14</sup>

Finally, the IDEA 97 Part B Regulation uses the term “*mental retardation*” in connection with the criteria used for determining the existence of a specific learning disability: “the team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of—...(2) *Mental retardation*;....”<sup>15</sup>

## USE OF ALTERNATIVE TERMS

IDEA 97 and its implementing regulation also use the terms “*developmental delay*” and “*developmental disability*.” The IDEA 97 Part B Regulation provides that the term “*child with a disability*” for children aged 3 through 9 may, at the discretion of the State and LEA and in accordance with § 300.313, include a child—

(1) *Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (2) Who, by reason thereof, needs special education and related services.*<sup>16</sup>

The Regulation further provides that if a state adopts the term *developmental delay*, the state will determine whether it applies to children aged 3 through 9, or to a subset of that age range but may not require an LEA to use that term for children within its jurisdiction.<sup>17</sup> However, if an LEA uses the term *developmental delay* for children described in § 300.7(b), the LEA must conform to both the State’s definition of that term and to the age range that has been adopted by the State.<sup>18</sup> If the State does not adopt the term *developmental delay*, an LEA may not independently use that term as a basis for establishing a child’s IDEA eligibility.<sup>19</sup> Any State or LEA that elects to use the term *developmental delay* for children aged 3 through 9 may also use one or more of the other IDEA disability categories for any child within that age range if it is determined that the child has such an impairment and because of that impairment needs special education and related services.<sup>20</sup> A State may adopt a common definition of *developmental delay* for use in programs under Parts B and C of the Act.<sup>21</sup>

The IDEA 97 Part C Regulation<sup>22</sup> defines the term “*infants and toddlers with disabilities*” to mean: “individuals from birth through age two who need early intervention services because they—(1) *Are experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas:*

(i) *Cognitive development.*

(ii) *Physical development, including vision and hearing.*

(iii) *Communication development.*

(iv) *Social or emotional development.*

(v) *Adaptive development; or*

(2) *Have a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.*<sup>23</sup>

The IDEA 97 Regulation also provides that a state, at its discretion, may include children from birth through age two who are at risk of having *substantial developmental delays* if early intervention services are not provided. The IDEA 97 Part C Regulation describes in detail how a state should define the term “developmental delay:”

*(a) The State shall define developmental delay by—(1) Describing, for each of the areas listed in § 303.16(a)(1), the procedures, including the use of informed clinical opinion, that will be used to measure a child’s development; and (2) Stating the levels of functioning or other criteria that constitute a developmental delay in each of those areas. (b) The State shall describe the criteria and procedures, including the use of informed clinical opinion, that will be used to determine the existence of a condition that has a high probability of resulting in developmental delay under § 303.16(a)(2).<sup>24</sup> (c) If the State elects to include in its system children who are at risk under § 303.16(b), the State shall describe the criteria and procedures, including the use of informed clinical opinion, that will be used to identify those children.<sup>25</sup>*

The IDEA 97 Part B Regulation uses the term “*developmental disability*” within the definition of “autism:”

*Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child’s educational performance.<sup>26</sup>*

## **(2) WIA Training and Vocational Rehabilitation Programs**

The Workforce Investment Act of 1998 (WIA) establishes statewide and local workforce investment systems and mandates major changes in the Vocational Rehabilitation (VR) program.<sup>27</sup> WIA emphasizes the need for a broader array of services with a youth development focus and provides a new infrastructure for better integrating currently separate youth-focused activities. In addition, each local *One-Stop* system must provide universal access for adults to a set of core services<sup>28</sup> and selected access (based on individual circumstances) to more intensive services<sup>29</sup> and to training services. Training services are generally provided through the use of *Individual Training Accounts* which allow program participants to choose a training service provider from an approved list. Within the VR program, priority is given to people with the most significant disabilities.

### **USE OF THE TERM “MENTAL RETARDATION”**

While WIA contains provisions prohibiting discrimination on the basis of disability within financially assisted programs or activities, the law and implementing regulations contain no specific reference to individuals with “mental retardation.”<sup>30</sup> The term “mental retardation” is used within the basic structure of the VR program extensively restructured by WIA. Within the VR program, states are required to provide rehabilitation services to eligible individuals<sup>31</sup> based on an “order of selection.” In this context, Federal regulations require that individuals with the most severe disabilities are selected for service before other individuals with disabilities.<sup>32</sup> The same regulations define “individual with a severe disability” to be:

*an individual with a disability—(i) Who has a severe physical or mental impairment that seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; (ii) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and (iii) Who has one or more physical*

*or mental disabilities resulting from ...mental retardation, ... or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs to cause comparable substantial functional limitation.*<sup>33</sup>

The Federal VR regulations do not define the term “mentally retarded.”

### (3) *The SSI and SSDI Programs*

The Social Security Administration (SSA) administers two programs that provide benefits based on disability: the Disability Insurance program (SSDI)<sup>34</sup> and the Supplemental Security Income (SSI) program.<sup>35</sup> The Social Security Act and SSA's implementing regulations prescribe rules for deciding if an individual is "disabled" with respect to eligibility for benefits provided under both of these programs. The Listing of Impairments<sup>36</sup> describes, for each major body system, impairments that are considered severe enough to prevent a person from doing any gainful activity (or in the case of children under age 18 applying for SSI, cause marked and severe functional limitations).<sup>37</sup> Within the SSDI and SSI programs, *mental retardation* is characterized as a mental disorder.<sup>38</sup>

#### The SSDI Program and Adults Within the SSI Program<sup>39</sup>

*Disability* is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment(s)<sup>40</sup> which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings.

#### USE OF THE TERM “MENTAL RETARDATION”

The evaluation of disability on the basis of mental disorder requires documentation of a medically determinable impairment(s), consideration of the degree of limitation such impairment(s) may impose on the individual's ability to work, and consideration of how long these limitations have lasted or are expected to last. Evidence from an acceptable medical source showing a medically determinable mental impairment must be produced. The listings for mental disorders are arranged in nine diagnostic categories. “Mental retardation” is the fifth of these categories.<sup>41</sup> In order to be determined eligible for benefits, the listing for “mental retardation” requires that the applicant meet:

- (1) The diagnostic description in the introductory paragraph; and
- (2) At least one of the “severity criteria.”

The diagnostic description of the term “mental retardation is: *significantly sub-average general intellectual functioning with deficits in adaptive functioning initially manifested during the developmental period; i.e., the evidence demonstrates or supports onset of the impairment before age 22.* The following “severity criteria”<sup>42</sup> are presented in the listing:

- Mental incapacity evidenced by dependence upon others for personal needs (e.g., toileting, eating, dressing, or bathing) and inability to follow directions, such that the use of standardized measures of intellectual functioning is precluded;<sup>43</sup>
- A valid verbal, performance, or full scale IQ of 59 or less;
- A valid verbal, performance, or full scale IQ of 60 through 70 plus a physical or other mental impairment imposing an additional and significant work-related limitation of function;
- A valid verbal, performance, or full scale IQ of 60 through 70, resulting in at least two of the following:<sup>44</sup>
  - Marked restriction of *activities of daily living*; or
  - Marked difficulties in *maintaining social functioning*; or
  - Marked difficulties in *maintaining concentration, persistence, or pace*; or

- Repeated *episodes of decompensation*, each of extended duration.

Standardized intelligence test results<sup>45</sup> are essential to the assessment of three of the *severity criteria* listed above.<sup>46</sup> Information concerning behavior during any attempt to work and the circumstances surrounding termination of work effort are particularly useful in determining the ability or inability to function in a work setting.<sup>47</sup>

#### USE OF THE TERM “ORGANIC MENTAL DISORDERS”

*Organic Mental Disorders* is the first category within the Listings for mental disorders.<sup>48</sup> In order to be determined eligible for benefits, the listing requires that the applicant:

- (1) Meet the diagnostic description in the introductory paragraph; and
- (2) Demonstrate the persistent loss of at least one specific cognitive ability or affective change; and
- (3) Meet at least one of the severity criteria.

The diagnostic description of the term “organic mental disorders” is: “*psychological or behavioral abnormalities associated with a dysfunction of the brain. History and physical examination or laboratory tests demonstrate the presence of a specific organic factor judged to be etiologically related to the abnormal mental state and loss of previously acquired functional abilities.*” Demonstration of a loss of specific cognitive abilities or affective changes and the medically documented persistence of at least one of the following:

- (a) Disorientation to time and place; or
- (b) Memory impairment, either short-term (inability to learn new information), intermediate, or long-term (inability to remember information that was known sometime in the past); or
- (c) Perceptual or thinking disturbances (e.g., hallucinations, delusions); or
- (d) Change in personality; or
- (e) Disturbance in mood; or
- (f) Emotional lability (e.g., explosive temper outbursts, sudden crying, etc.) and impairment in impulse control; or
- (g) Loss of measured intellectual ability of at least 15 I.Q. points from prior levels or overall impairment index clearly within the severely impaired range on neuropsychological testing.

The following “severity criteria” are presented in the listing:

- The lost cognitive ability(ies) or affective changes have resulted in at least two of the following:
  - Marked restriction of *activities of daily living*; or
  - Marked difficulties in *maintaining social functioning*; or
  - Marked difficulties in *maintaining concentration, persistence, or pace*; or
  - Repeated *episodes of decompensation*, each of extended duration; OR
- A medically documented history of a chronic organic mental disorder of at least 2 years’ duration that has caused more than a minimal limitation of ability to do basic work activities, with symptoms or signs currently attenuated by medication or psychosocial support, and one of the following:
  - Repeated episodes of decompensation, each of extended duration; or

- A residual disease process that has resulted in such marginal adjustment that even a minimal increase in mental demands or change in the environment would be predicted to cause the individual to decompensate; or
- Current history of 1 or more years' inability to function outside a highly supportive living arrangement, with an indication of continued need for such an arrangement.

#### **USE OF THE TERM “DOWN SYNDROME”**

The listings for “Multiple Body Systems”<sup>49</sup> expressly include *Down syndrome*<sup>50</sup> established by clinical findings, including the characteristic physical features, and laboratory evidence is considered to meet the requirement of the listing, commencing at birth.<sup>51</sup>

#### **Children Within the SSI Program**<sup>52</sup>

A child under age 18 is considered disabled if he or she has a medically determinable physical or mental impairment or combination of impairments that causes marked and severe functional limitations, and that can be expected to cause death or that has lasted or can be expected to last for a continuous period of not less than 12 months. A physical or mental impairment must be established by medical evidence consisting of signs, symptoms, and laboratory findings.

#### **USE OF THE TERM “MENTAL RETARDATION”**

The listings for mental disorders are arranged in eleven diagnostic categories;<sup>53</sup> “mental retardation” is the fifth of these categories.<sup>54</sup> In order to be determined eligible for benefits, the listing for “mental retardation” requires that the applicant meet:

- (1) The diagnostic description in the introductory paragraph; and
- (2) At least one of the severity criteria (listed below).

The diagnostic description of the term “mental retardation is: “*Mental Retardation:*” *Characterized by significantly subaverage general intellectual functioning with deficits in adaptive functioning.*

The following “severity criteria”<sup>55</sup> are presented in the listing:

- For older infants and toddlers (age 1 to attainment of age 3), resulting in at least one of the following appropriate age-group criteria:
  - Gross or fine motor development<sup>56</sup> at a level generally acquired by children no more than one-half the child's chronological age; or
  - Cognitive/communicative function at a level generally acquired by children no more than one-half the child's chronological age; or
  - Social function<sup>57</sup> at a level generally acquired by children no more than one-half the child's chronological age; or
  - Attainment of development or function generally acquired by children no more than two-thirds of the child's chronological age in two or more of the above areas; and

—resulting in marked impairment (or difficulty) in at least two of the following areas:

- Age-appropriate cognitive/communicative functioning;<sup>58</sup>
- Age-appropriate social functioning;
- Age-appropriate personal functioning;<sup>59</sup> or
- Difficulties in maintaining concentration, persistence, or pace.

OR

- Mental incapacity evidenced by dependence upon others for personal needs (grossly in excess of age-appropriate dependence) and inability to follow directions such that the use of standardized measures of intellectual functioning is precluded; OR
- A valid verbal, performance, or full scale IQ of 59 or less; OR
- A valid verbal, performance, or full scale IQ of 60 through 70 and a physical or other mental impairment imposing an additional and significant limitation of function; OR
- A valid verbal, performance, or full scale IQ of 60 through 70.
- For older infants and toddlers (age 1 to attainment of age 3), resulting in attainment of development or function generally acquired by children no more than two-thirds of the child's chronological age.<sup>60</sup>
  - Gross or fine motor development at a level generally acquired by children no more than one-half the child's chronological age; or
  - Social function at a level generally acquired by children no more than one-half the child's chronological age.
- For children (age 3 to attainment of age 18), resulting in at least one of the following:
  - Marked impairment in age-appropriate social functioning, documented by history and medical findings (including consideration of information from parents or other individuals who have knowledge of the child, when such information is needed and available) and including, if necessary, the results of appropriate standardized tests; or
  - Marked impairment in age-appropriate personal functioning, documented by history and medical findings (including consideration of information from parents or other individuals who have knowledge of the child, when such information is needed and available) and including, if necessary, appropriate standardized tests; or
  - Marked difficulties in maintaining concentration, persistence, or pace; OR
- For older infants and toddlers (age 1 to attainment of age 3), resulting in attainment of cognitive/communicative development or function generally acquired by children no more than two-thirds of the child's chronological age, and a physical or other mental impairment imposing an additional and significant limitation of function; or
- For children (age 3 to attainment of age 18), resulting in a marked impairment in age-appropriate cognitive/communicative function, and a physical or other mental impairment imposing an additional and significant limitation of function.

#### **USE OF THE TERM “DEVELOPMENTAL AND EMOTIONAL DISORDERS OF NEWBORN AND YOUNGER INFANTS”<sup>61</sup>**

*Developmental and Emotional Disorders of Newborn and Younger Infants* is the twelfth category within the listings for mental disorders.<sup>62</sup> In order to be determined eligible for benefits, the listing requires that the child:

- (1) Meet the diagnostic description in the introductory paragraph; and
- (2) Meet at least one of the severity criteria (listed below)

The diagnostic description of the term “Developmental and Emotional Disorders of Newborn and Younger Infants” is a disorder: “*evidenced by a deficit or lag in the areas of motor, cognitive/ communicative,*

or social functioning. These disorders may be related either to organic or to functional factors or to a combination of these factors.” The following “severity criteria” are presented in the listing:

- Cognitive/communicative functioning generally acquired by children no more than one-half the child’s chronological age, as documented by appropriate medical findings (e.g., in infants 0-6 months, markedly diminished variation in the production or imitation of sounds and severe feeding abnormality, such as problems with sucking, swallowing, or chewing) including, if necessary, a standardized test; OR
- Motor development generally acquired by children no more than one-half the child’s chronological age, documented by appropriate medical findings, including if necessary, a standardized test; OR
- Apathy, over-excitability, or fearfulness, demonstrated by an absent or grossly excessive response to one of the following:
  - Visual stimulation; or
  - Auditory stimulation; or
  - Tactile stimulation; OR
- Failure to sustain social interaction on an ongoing, reciprocal basis as evidenced by:
  - Inability by 6 months to participate in vocal, visual, and motoric exchanges (including facial expressions); or
  - Failure by 9 months to communicate basic emotional responses, such as cuddling or exhibiting protest or anger; or
  - Failure to attend to the caregiver’s voice or face or to explore an inanimate object for a period of time appropriate to the infant’s age; OR
- Attainment of development or function generally acquired by children no more than two-thirds of the child’s chronological age in two or more areas (i.e., cognitive/communicative, motor, and social), documented by appropriate medical findings, including if necessary, standardized testing.

#### **(4) *The Medicaid Home and Community Based Waiver Program***

Title XIX of the Social Security Act is a Federal/State entitlement program that pays for medical assistance for certain individuals and families with low incomes and resources.

Medicaid policies for eligibility, services, and payment are complex and vary considerably, even among States of similar size or geographic proximity. Individuals are generally eligible for Medicaid if they are SSI recipients.<sup>63</sup> States also have the option of providing Medicaid coverage for other "categorically related" groups including certain aged, blind, or disabled adults who have incomes above those requiring mandatory coverage, but below the poverty level and certain working-and-disabled persons with family income less than 250% of the poverty level who would qualify for SSI if they did not work. Medicaid coverage may also be provided to both institutionalized individuals and individuals who would be eligible if institutionalized, but who are receiving care under home and community-based services waivers.<sup>64</sup>

Section 1905 (d) of the Social Security Act defines an ““intermediate care facility for the mentally retarded” to be “an institution (or distinct part thereof) for the mentally retarded or persons with related conditions,” and authorizes payment for Intermediate care facility (ICF/MR) services provided to eligible individuals.<sup>65</sup> Section 1915(b) waivers allow States to develop innovative health care delivery or reimbursement systems. Medicaid home and community-based service (HCBS) waivers afford States the flexibility to develop and implement creative alternatives to placing Medicaid-eligible individuals in hospitals, nursing facilities or intermediate care facilities for persons with mental retardation. States are allowed to waive certain Medicaid program requirements and thereby deviate from Medicaid requirements by providing benefits

to individuals in designated groups that members of other groups are not eligible to receive. Federal regulations permit HCBS waiver programs to serve a variety of persons including individuals with “mental retardation and related conditions.”<sup>66</sup> States have the flexibility to design each waiver program and select the mix of waiver services that best meets the needs of the population they wish to serve.<sup>67</sup> HCBS waiver programs are initially approved for 3 years and may be renewed at 5- year intervals. There are currently 240 HCBS waiver programs in effect; approximately one-third of these waivers are targeted towards persons with mental retardation/ developmental disability (MR/DD).<sup>68</sup>

#### USE OF THE TERM “MENTAL RETARDATION AND RELATED CONDITIONS”

The eligibility of persons with "mental retardation and related conditions" for the HCBS program incorporates by reference the SSI eligibility standards outlined above.<sup>69</sup> These standards classify an individual as having “mental retardation” if he or she has an IQ of 59 or less, or an IQ of 60-69 plus physical and mental impairments that impose significant work-related limitations. For purposes of screening or reviewing individuals with mental retardation who apply to or reside in Medicaid certified nursing facilities, Medicaid regulations define “mental retardation” as follows:

*An individual is considered to have mental retardation (MR) if he or she has—(i) A level of retardation (mild, moderate, severe or profound) described in the American Association on Mental Retardation’s Manual on Classification in Mental Retardation (1983).<sup>70</sup>*

These same regulations define persons with a "related condition" to be:

*Individuals who have a severe, chronic disability that meets all of the following conditions:(a) It is attributable to-- (1) Cerebral palsy or epilepsy; or (2) Any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons. (b) It is manifested before the person reaches age 22. (c) It is likely to continue indefinitely. (d) It results in substantial functional limitations in three or more of the following areas of major life activity:(1) Self-care. (2) Understanding and use of language. (3) Learning. (4) Mobility. (5) Self-direction. (6) Capacity for independent living.<sup>71</sup>*

The Center for Medicaid and State Operations has provided the following guidance to states concerning HCBS targeting criteria:

*Under 42 CFR 441.301(b)(6), HCBS waivers must “be limited to one of the following targeted groups or any subgroup thereof that the State may define: (i) aged or disabled or both, (ii) mentally retarded or developmentally disabled or both, (iii) mentally ill.” States have flexibility in establishing targeting criteria consistent with this regulation. States may define these criteria in terms of age, nature or degree or type of disability, or other reasonable and definable characteristics that sufficiently distinguish the target group in understandable terms. HCFA recognizes that discrete target groups may encompass more than one of the categories of individuals defined in this regulation.<sup>72</sup>*

#### (5) State Special Education Programs

Special education programs for children with disabilities are currently operating in all 50 states and the District of Columbia. Over the last 40 years, a combination of legal and legislative action resulted in dramatically increased educational opportunity for children with disabilities. Many of the landmark cases establishing a “right to education” were brought on behalf of children with “mental retardation” and their families. In 1975, Congress passed P. L. 94-142,<sup>73</sup> a law that established specific and uniform requirements (e.g., the guarantee of a free and appropriate public education; development of an individualized education program) and provides Federal funding for local school systems that comply with these standards. In implementing both State and Federal special education laws, State education agencies are responsible for determining what terms to apply to the population of students with disabilities to be served. Detailed state-by-

state notes on State special education terminology are attached as Appendix B as 1. Notes on Special Education Laws and Regulations.

**Table 1** presents an overview of the results of a study conducted by project staff of the terms currently adopted by States (by statute, regulation or administrative rulemaking) to governing the classify and report students eligible to receive special education and related services under State and Federal special education mandates. The first column shows the state abbreviation. The *second column* shows whether (shaded) or not the state uses the term “mental retardation” and, if so, indicates in brackets any subcategories that are used. The third column shows whether (shaded) the state uses a term other than “mental retardation” to report children with similar characteristics and, if so, indicates what alternative term or terms (and subcategories, if any) are used. The fourth column indicates whether (shaded) or not the state has elected to use the term “developmentally delayed.”

A review of the information presented on **Table 1** shows that only 25 States and the District of Columbia currently used the term “mental retardation” within the operation of their special education programs despite the fact that it is the term used in the IDEA 97

**Table 1**  
**Overview of State Special Education Terminology**

State	Mental Retardation <sup>74</sup>	Other	Developmental Delay <sup>75</sup>
AL	Retarded		
AK			
AZ	[mild, moderate & severe]		
AR			
CA			
CO		Significant limited intellectual capacity	
CN		Intellectual disability	
DE		Mental disability [educable, trainable & severe]	
DC			
FL		Mental handicap [educable, trainable & profound]	

State	Mental Retardation <sup>74</sup>	Other	Developmental Delay <sup>75</sup>
GA		Intellectual disability [mild, moderate, severe & profound]	
HA			
ID			
IL			
IN		Mental disability [mild, moderate & severe]	
IA		Mental disability	
KS			
KY		Mental disability	
LA		Mental disability	
ME			
MD			
MA		Intellectual impairment	
MI		Mental impairment [educably, trainable & severely]	
MN		Mental handicap [mild-moderate & moderate-severe]	
MS	[educable, trainable, & severely/profoundly]		
MO			
MT		Cognitive delay	
NE		Mental handicap	

State	Mental Retardation <sup>74</sup>	Other	Developmental Delay <sup>75</sup>
NV			
NH			
NJ		Cognitive impairment [mild, moderate & severe]	
NM		Intellectual disability	
NY			
NC		Mental disability	
ND			
OH		Developmental handicap <i>Cognitive disability</i>	
OK <sup>76</sup>		Mental handicap [educable & trainable]	
OR			
PA			
RI			
SC		Mental handicap [educable & trainable] <sup>77</sup> <i>Mental disability</i> <sup>78</sup>	
SD			
TN		Functional delay	
TX			
UT		Intellectual disability	
VT		Learning impairment or delay	

State	Mental Retardation <sup>74</sup>	Other	Developmental Delay <sup>75</sup>
VA			
WA			
WV		Mental impairment	
WI		Cognitive disability	
WY		Mental disability	

Regulation. While over the past decade, several states have adopted an alternative term, there is no clear pattern as to which alternative term appears preferable. Of the 25 states that do not use the term *mental retardation*:

- 15 states use either *mental disability* (8), *mental handicap* (5) or *mental impairment* (2);
- 6 states use *intellectual disability* (4), *intellectual impairment* (1) or *significantly limited intellectual capacity* (1);
- 3 states use *cognitive disability* (1), *cognitive impairment* (1) or *cognitive delay* (1);
- 1 state uses *developmental handicap*
- 1 state uses *learning impairment or delay*; and
- 1 state uses *functional delay*.

**Table 1** also shows that 36 states have adopted the term “developmentally delayed” and adoption is pending in an additional state.

**Table 2** (below) reports for each state the terms and definitions used to identify children who are defined by the IDEA 97 Regulation to be “mentally retarded.” A review of the information presented on **Table 2** shows that only 15 of the 26 States<sup>79</sup> that have elected to use the term “mental retardation” use the IDEA 97 definition. With respect to the 25 States that have adopted an alternative term, 7 have used the IDEA 97 regulatory definition of “mental retardation” as the definition for the alternative term. Most of the 11 States using the term “mental retardation” that did not adopt the IDEA 97 definition used a very similar definition. Only 4 states (i.e., Alabama, Alaska, Nevada and New Jersey) used a significantly different definition. Of the 18 States that have adopted an alternative term and have not used the IDEA 97 regulatory definition of “mental retardation,” only 2 (i.e., Connecticut and Vermont) appear to have used a definition that differs significantly from that IDEA definition.

**Table 2**

**State Special Education Eligibility Categories and Definitions**

State	Term and Definition
IDEA 97	“ <u>Mental retardation</u> .” Significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance. <sup>80</sup>

State	Term and Definition
AL	<p>“<u>Retardation.</u>” Subaverage general intellectual functioning which: (a) either originates during the developmental period or results from brain damage caused by disease or physical injury occurring subsequent to the developmental period; and (b) is associated with impairment in adaptive behavior.<sup>81</sup></p>
AK	<p>“<u>Mental retardation.</u>” A child must: (1) score two or more standard deviations below the national norm on an individual standardized test of intelligence, and exhibit deficits in adaptive behavior manifested during the developmental period which adversely affect the child's educational performance; (2) require special facilities, equipment, or methods to make the child's educational program effective; (3) be diagnosed as mentally retarded by a psychiatrist, or by a psychologist who is licensed..., certified ..., or endorsed; and (4) be certified by a multidisciplinary team as qualifying for and needing special education services for the mentally retarded.<sup>82</sup></p>
AZ	<p>“<u>Mental retardation.</u>” [IDEA 97 regulatory definition is incorporated.]<sup>83</sup></p>
AR	<p>“<u>Mental retardation.</u>” [IDEA 97 regulatory definition is incorporated.]<sup>84</sup></p>
CA	<p>“<u>Mental retardation.</u>” [IDEA 97 regulatory definition is incorporated.]<sup>85</sup></p>
CO	<p>“<u>Significant limited intellectual capacity.</u>” Criteria for determining significant limited intellectual capacity include: (1) a score of more than 2.0 standard deviations below the mean on individually administered measures of cognition; (2) evidence that the level of independent adaptive behavior is significantly below the culturally imposed expectations of personal and social responsibilities; and (3) a deficiency in academic achievement, as indicated by scores 2.0 standard deviations below the mean in measures of language, reading and math.<sup>86</sup></p>
CN	<p>“<u>Intellectual disability.</u>” Significant deficits in conceptual, practical and social intelligence that adversely affect a student’s educational performance and are manifested during the developmental period (birth to age 18).<sup>87</sup></p>
DE	<p>“<u>Mental disability.</u>” The IEP team shall consider both the level of intellectual functioning and effectiveness of adaptive behavior...in determining that a child has a mental disability and the degree of mental disability. Degree of mental disability is defined as follows: Educable Mental Disability (EMD) - I.Q. 50-70, + 5 points; Trainable Mental Disability (TMD) - I.Q. 35-50, + 5 points; Severe Mental Disability (SMD) - I.Q. below 35.<sup>88</sup></p>

State	Term and Definition
DC	“ <u>Mental retardation.</u> ” [IDEA 97 regulatory definition is incorporated.]
FL	“ <u>Mental handicap.</u> ” Significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. <sup>89</sup> Students with mental handicaps are further categorized as “educable mentally handicapped,” <sup>90</sup> “trainable mentally handicapped,” <sup>91</sup> or “profoundly mentally handicapped.” <sup>92</sup>
GA	“ <u>Intellectual disability.</u> ” Significantly subaverage general intellectual functioning which exists concurrently with deficits in adaptive behavior that adversely affect educational performance and is manifested during the developmental period. <sup>93</sup> “Students with intellectual disabilities are further categorized as having a mild intellectual disability, <sup>94</sup> moderate intellectual disability, <sup>95</sup> severe intellectual disability <sup>96</sup> or profound intellectual disability. <sup>97</sup>
HA	“ <u>Mental retardation.</u> ” A student shall be eligible under the disability category of mental retardation when all of the following are met: (1) The student has sub-average general intellectual functioning, as demonstrated by evidence of intellectual functioning two or more standard deviations below the mean; (2) The subaverage intellectual functioning exists concurrently with deficits in at least two adaptive skill areas; and (3) The subaverage intellectual functioning and deficits in adaptive skill areas were manifested during the developmental period and adversely affect the student's educational performance. <sup>98</sup>
ID	“ <u>Mental Retardation.</u> ” [IDEA 97 regulatory definition is incorporated.] <sup>99</sup>
IL	“ <u>Mental retardation.</u> ” [IDEA 97 regulatory definition is used.] <sup>100</sup>
IN	“ <u>Mental disability.</u> ” Significantly below average general intellectual functioning existing concurrently with deficits in adaptive behavior that adversely affects educational performance. <sup>101</sup> Students with mental disabilities are further categorized as having a “mild mental disability,” <sup>102</sup> “moderate mental disability” <sup>103</sup> or “severe mental disability.” <sup>104</sup>
IA	“ <u>Mental disability.</u> ” [IDEA 97 regulatory definition of “mental retardation” is used.] <sup>105</sup>
KS	“ <u>Mental retardation.</u> ” [IDEA 97 regulatory definition is used.] <sup>106</sup>
KY	“ <u>Mental disability.</u> ” A deficit or delay in intellectual and adaptive behavior functioning, which adversely affects educational performance to the extent that specially designed instruction is required for the pupil to benefit from education, and which is typically manifested during the developmental period. <sup>107</sup>
LA	“ <u>Mental disability.</u> ” Substantial limitations in present functioning...characterized by

State	Term and Definition
	significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable skill areas: communication, home living, community use, health and safety, leisure, self-care, social skills, self-direction, functional academics, and work. <sup>108</sup>
ME	“ <u>Mental retardation.</u> ” [IDEA 97 regulatory definition is used.] <sup>109</sup>
MD	“ <u>Mental retardation.</u> ” General intellectual functioning, adversely affecting a student's educational performance, which: (a) Is significantly subaverage; (b) Exists concurrently with deficits in adaptive behavior; and (c) Is manifested during the developmental period. <sup>110</sup>
MA	“ <u>Intellectual impairment.</u> ” The permanent capacity for performing cognitive tasks, functions, or problem solving is significantly limited or impaired and is exhibited by more than one of the following: a slower rate of learning; disorganized patterns of learning; difficulty with adaptive behavior; and/or difficulty understanding abstract concepts. Such term shall include students with mental retardation. <sup>111</sup>
MI <sup>112</sup>	“ <u>Educably mentally impaired.</u> ” The educable mentally impaired shall be determined through the manifestation of all of the following behavioral characteristics: (a) Development at a rate approximately 2 to 3 standard deviations below the mean as determined through intellectual assessment. (b) Scores approximately within the lowest 6 percentiles on a standardized test in reading and arithmetic. This requirement shall not apply if the child is not age or grade appropriate for formal or standardized testing. (c) Lack of development primarily in the cognitive domain. (d) Impairment of adaptive behavior. <sup>113</sup> “ <u>Trainable mentally impaired.</u> ” The trainable mentally impaired shall be determined through manifestation of all of the following behavioral characteristics: (a) Development at a rate approximately 3 to 4 ½ standard deviations below the mean as determined through intellectual assessment. (b) Lack of development primarily in the cognitive domain. (c) Impairment of adaptive behavior. <sup>114</sup> “ <u>Severely mentally impaired.</u> ” The severely mentally impaired shall be determined through manifestation of all of the following behavioral characteristics: (a) Development at a rate approximately 4½ or more standard deviations below the mean as determined through intellectual assessment. b) Lack of development primarily in the cognitive domain. (c) Impairment of adaptive behavior. <sup>115</sup>
MN	“ <u>Mental impairment.</u> ” Significantly subaverage general intellectual functioning resulting in or associated with concurrent deficits in adaptive behavior that may require special education instruction and related services. <sup>116</sup> Children with mental impairments are further categorized as having either a “mild-moderate mental impairment” or “moderate-severe mental impairment.” <sup>117</sup>

State	Term and Definition
MS	“ <u>Educational disability</u> .” These children have significantly subaverage intelligence existing concurrently with deficits in adaptive behavior and in academic functioning or performance that adversely affects a child’s educational performance. <sup>118</sup>
MO	“ <u>Mental retardation</u> .” [IDEA 97 regulatory definition is used.] <sup>119</sup>
MT	“ <u>Cognitive delay</u> .” [IDEA 97 regulatory definition of “mental retardation” is used.] <sup>120</sup>
NE	“ <u>Mental handicap</u> .” Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's development or educational performance. <sup>121</sup>
NV	“ <u>Mental retardation</u> .” A condition that: (1) Is characterized by intellectual functioning at a level that is significantly below average, and which exists concurrently with related limitations in two or more of the following adaptive skill areas: (a) Communication skills; (b) Self-care; (c) Home living; (d) Social skills; (e) Use of the community; (f) Self-direction; (g) Health and safety; (h) Functional academics; (I) Leisure; and (j) Work; (2) Manifests before the age of 18 years; and (3) Adversely affects the educational performance of a pupil. <sup>122</sup>
NH	“ <u>Mentally retarded</u> .” [IDEA 97 regulatory definition is incorporated.] <sup>123</sup>
NJ <sup>124</sup>	“ <u>Mentally retarded</u> .” <sup>125</sup> Children with mental retardation are further classified into one of three subcategories: (1) educable mentally retarded children; (2) trainable mentally retarded children and (3) children eligible for day training. <u>Educable mentally retarded</u> children are defined as those who may be expected to succeed with a minimum of supervision in homes and schools and community life and are characterized particularly by reasonable expectation that at maturity they will be capable of vocational and social independence in competitive environment. <sup>126</sup> <u>Trainable mentally retarded</u> children are defined as those who are so retarded that they cannot be classified as educable but are, notwithstanding, potentially capable of self-help, of communicating satisfactorily, or participating in groups, of directing their behavior so as not to be dangerous to themselves or others and of achieving with training some degree of personal independence and social and economic usefulness within sheltered environments. <sup>127</sup> <u>Children eligible for day training</u> are defined as those who are those so severely mentally retarded as to be incapable of giving evidence of understanding and responding in a positive manner to simple directions expressed in the child's primary mode of communication and who cannot in some manner express basic wants and needs. <sup>128</sup> “ <u>Cognitively impaired</u> .” Corresponds to

State	Term and Definition
	“mentally retarded” and means a disability that is characterized by significantly below average general cognitive functioning existing concurrently with deficits in adaptive behavior; manifested during the developmental period that adversely affects a student’s educational performance and is characterized by one of the following: (1) Mild cognitive impairment...; (2) Moderate cognitive impairment ...; (3) Severe cognitive impairment.... <sup>129</sup>
NM	“ <u>Intellectually disabled.</u> ” [IDEA 97 regulatory definition of “mental retardation” is used.] <sup>130</sup>
NY	“ <u>Mental retardation.</u> ” [IDEA 97 regulatory definition is used.] <sup>131</sup>
NC	“ <u>Mentally disabled.</u> ” Significantly subaverage general cognitive functioning and a reduced rate of learning. This condition exists concurrently with deficits in adaptive behavior, is manifested during the developmental period, and adversely affects the student's educational performance. <sup>132</sup>
ND	“ <u>Mental retardation.</u> ” [IDEA 97 regulatory definition is incorporated.] <sup>133</sup>
OH <sup>134</sup>	“ <u>Developmental handicap</u> ” [“ <u>cognitive disability</u> ”]. [IDEA 97 regulatory definition of “mental retardation” is used.] <sup>135</sup>
OK <sup>136</sup>	“ <u>Educable mentally handicapped</u> ” and “ <u>Trainable mentally handicapped</u> ” [“mental retardation”]. [IDEA 97 regulatory definition of “mental retardation” is used.] <sup>137</sup>
OR	“ <u>Mental retardation.</u> ” Significantly subaverage general intellectual functioning, and includes a student whose intelligence test score is two or more standard deviations below the norm on a standardized individual intelligence test, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, and that adversely affects a child's educational performance. <sup>138</sup>
PA	“ <u>Mental retardation.</u> ” [IDEA 97 regulatory definition is incorporated.] <sup>139</sup>
RI	“ <u>Mental retardation.</u> ” [IDEA 97 regulatory definition is used.] <sup>140</sup>
SC <sup>141</sup>	“ <u>Mental disability.</u> ” Mental retardation. [IDEA 97 regulatory definition of “mental retardation” is used.] <sup>142</sup>
SD	“ <u>Mental retardation.</u> ” Significantly below-average intellectual functioning existing

State	Term and Definition
	concurrently with deficits in adaptive behavior and is generally manifested before age eighteen. <sup>143</sup>
TN	“ <u>Mental retardation</u> .” Substantial limitations in present levels of functioning that adversely affect a child’s educational performance. It is characterized by significantly impaired intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period. <sup>144</sup>
TX	“ <u>Mental retardation</u> .” In meeting the criteria stated in 34 CFR, §300.7(c)(6), a student with mental retardation is one who has been determined to be functioning at two or more standard deviations below the mean on individually administered scales of verbal ability, and either performance or nonverbal ability, and who concurrently exhibits deficits in adaptive behavior. <sup>145</sup>
UT	“ <u>Intellectual disability</u> .” [IDEA 97 regulatory definition of “mental retardation” is used.] <sup>146</sup>
VT	“ <u>Learning impairment or delay</u> .” A delay of sufficient magnitude to cause a student's performance to fall at or below -1.5 standard deviations from the mean of a test of intellectual ability and the student shall show concurrent deficits in adaptive behavior. <sup>147</sup>
VA	“ <u>Mental retardation</u> .” [IDEA 97 regulatory definition is used.] <sup>148</sup>
WA	“ <u>Mental retardation</u> .” Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects their educational performance and requires specially designed instruction. <sup>149</sup>
WV	“ <u>Mental impairment</u> .” Substantial limitations in present functioning characterized by significantly subaverage intellectual functioning existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental impairments manifest before age 18. <sup>150</sup>
WI	“ <u>Cognitive disability</u> .” [IDEA 97 regulatory definition of “mental retardation” is used.] <sup>151</sup>
WY	“ <u>Mental disability</u> .” [IDEA 97 regulatory definition of “mental retardation” is used.] <sup>152</sup>

## (6) State General Assistance Programs

A *General Assistance (GA)* program is a cash and in-kind assistance program that: (1) is financed and administered entirely by the state, county, or locality in which it operates; (2) is designed to meet the short-term or ongoing needs of low-income persons ineligible for (or awaiting approval for) federally funded cash assistance;<sup>153</sup> and (3) provides assistance for at least two consecutive months.<sup>154</sup> While this definition includes *interim assistance*,<sup>155</sup> it does not include state-segregated or state-separate TANF programs.<sup>156</sup> Sixteen states have no statewide General Assistance programs.<sup>157</sup> Thirty-four states and the District of Columbia have state General Assistance programs in which the state government has at least some involvement.<sup>158</sup> Detailed state-by-state notes on State general assistance programs are attached in the Appendix B as 2. Notes on General Assistance Laws and Regulations.

Twenty-four states: Alaska, Arizona, Colorado, Connecticut, Delaware, Hawaii, Illinois, Kansas, Maryland, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, Utah, Vermont and Washington, identify persons with disabilities, including those waiting to become eligible for SSI or SSDI as targeted recipients of their general assistance programs but only one of these states expressly identifies persons with *mental retardation*, as eligible recipients for provides general assistance. Mississippi identifies as a recipient for State Financial Assistance:

*a child who cannot pursue all regular class work due to reasons of...mental retardation...has not finished or graduated from high school, and who is in attendance in a private school, parochial school or speech, hearing and/or language clinic.*<sup>159</sup>

**Notes**

1. Other terms to describe the same population or characteristics in these contexts. E.g., “mental deficiency,” “mental disability,” “developmental disability,” “intellectual disability.”
2. The Individuals with Disabilities Education Act of 1997, as amended.
3. The Workforce Investment Act of 1998, as amended.
4. Operated under the Rehabilitation Act of 1973, as amended.
5. Title XVI of the Social Security Act, as recently amended by the *Ticket to Work and Work Incentives Improvement Act of 1999*.
6. Title II of the Social Security Act, as recently amended by the *Ticket to Work and Work Incentives Improvement Act of 1999*.
7. Title XIX of the Social Security Act, as amended.
8. A *General Assistance (GA)* program is a cash and in-kind assistance program that: (1) is financed and administered entirely by the state, county, or locality in which it operates; (2) is designed to meet the short-term or ongoing needs of low-income persons ineligible for (or awaiting approval for) federally funded cash assistance; (3) provides assistance for at least two consecutive months. While this definition includes *interim assistance*, it does not include state-segregated or state-separate TANF programs.
9. The term “mental retardation” also occurs in Section 673(e)(1) of IDEA 97 in the context of “authorized activities” related to “high-incidence disabilities.” “(1) IN GENERAL- In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), to benefit children with high-incidence disabilities, such as children with specific learning disabilities, speech or language impairment, or mental retardation.”
10. 34 CFR 300.
11. 34 CFR 300.7(a)(1).
12. 34 CFR 300.7(c)(6).
13. 34 CFR 300.7(c)(7).
14. 34 CFR 300.7(c)(10).
15. 34 CFR 300.541(b).
16. 34 CFR 300.7(b).
17. 34 CFR 300.313(a)(1)(2).
18. 34 CFR 300.313(a)(3).
19. 34 CFR 300.313(a)(4).
20. 34 CFR 300.313(b)(1).
21. 34 CFR 300.313(c).
22. 34 CFR 303.
23. 34 CFR 303.16(a).

24. The phrase “a diagnosed physical or mental condition that has a high probability of resulting in developmental delay,” as used in paragraph (a)(2) of this section, applies to a condition if it typically results in developmental delay. Examples of these conditions include chromosomal abnormalities; genetic or congenital disorders; severe sensory impairments, including hearing and vision; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; disorders secondary to exposure to toxic substances, including fetal alcohol syndrome; and severe attachment disorders.
25. 34 CFR 303.10 and 303.300. With respect to paragraph (b) of this section, children who are at risk may be eligible under this part if a State elects to extend services to that population, even though they have not been identified as disabled. Under this provision, States have the authority to define who would be “at risk of having substantial developmental delays if early intervention services are not provided.” In defining the “at risk” population, States may include well-known biological and environmental factors that can be identified and that place infants and toddlers “at risk” for developmental delay. Commonly cited factors include low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, infection, nutritional deprivation, and a history of abuse or neglect. It should be noted that “at risk” factors do not predict the presence of a barrier to development, but they may indicate children who are at higher risk of developmental delay than children without these problems.
26. 34 CFR 300.7(c)(1)(i).
27. Full implementation of WIA by all states was required by July 2000. WIA requires States to integrate the different program streams in order to establish a comprehensive, coordinated and accountable system for providing needed services and supports to youth and adults with disabilities.
28. These “core services” are: (1) determination of eligibility of services; (2) outreach, intake and orientation to the *One-Stop* system; (3) initial assessment; (4) job search and placement assistance, and career counseling; (5) provision of information; (6) assistance in establishing eligibility for Welfare-to-Work and financial aid assistance; and (7) follow-up services.
29. These “intensive services” include: (1) comprehensive and specialized assessments of skill levels; (2) development of an individual employment plan; (3) group counseling; (4) individual counseling and career planning; (5) case management; and (6) short-term pre-vocational services Including comprehensive and specialized assessments of skill levels; development of an individual employment plan; group and individual counseling; career planning; case management; and short-term pre-vocational services.
30. Section 188 of the Workforce Investment Act of 1998, and 29 CFR Part 37.
31. Basic VR eligibility requirements are: (1) a determination that the applicant has a physical or mental impairment; (2) a determination that the applicant’s physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant; (3) a presumption that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. 34 CFR 361.42(a).
32. 34 CFR 361.36 (c)(3).
33. 34 CFR 361.5(b)(28).
34. The SSDI program provides for payment of disability benefits to individuals who are "insured" under the Act by virtue of their contributions to the Social Security trust fund through the Social Security tax on their earnings, as well as to certain disabled dependents of insured individuals.

35. The SSI program provides payments to individuals (including children under age 18) who are disabled and have limited income and resources.
36. Most of the listed impairments are permanent or expected to result in death, or a specific statement of duration is made. For all others, the evidence must show that the impairment has lasted or is expected to last for a continuous period of at least 12 months.
37. The medical criteria in part A may also be applied in evaluating impairments in persons under age 18 if the disease processes have a similar effect on adults and younger persons. Part B contains additional medical criteria that apply only to the evaluation of impairments of persons under age 18. In evaluating disability for a person under age 18, part B will be used first.
38. *Disability Evaluation Under Social Security*. SSA Pub. No. 64-039, January 2001, §12.00.
39. Part A of the Listings contains medical criteria that apply to adults age 18 and over.
40. A medically determinable physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques.
41. *Disability Evaluation Under Social Security, op. cit.*, §12.05.
42. Paragraphs A and B contain criteria that describe disorders that are severe enough to prevent any gainful activity without the need for any additional assessment of functional limitations.
43. This paragraph provides a basis for demonstrating eligibility where the results of standardized intelligence tests are unavailable, e.g., where their condition precludes formal standardized testing.
44. *Activities of daily living* include adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for your grooming and hygiene, using telephones and directories, and using a post office. The quality of these activities is assessed in terms of their independence, appropriateness, effectiveness, and sustainability. *Social functioning* refers to the capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals, and includes the ability to get along with others. *Concentration, persistence and pace* refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. These limitations may be assessed through clinical examination or psychological testing. *Episodes of decompensation* are exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence, or pace.
45. IQ tests that are wide in scope, include items that test both verbal and performance abilities, and have appropriate validity, reliability, and norms should be used. These tests must be individually administered by a qualified specialist (i.e., a person currently licensed or certified in the State to administer, score, and interpret psychological tests) with appropriate training and experience. The narrative report that accompanies the test results should comment on whether the IQ scores are considered valid and consistent with the developmental history and the degree of functional limitation.
46. The specific IQ score ranges listed above reflect values from tests of general intelligence that have a mean of 100 and a standard deviation of 15 (e.g., the Wechsler series). In cases where more than one IQ is customarily derived from the test administered (e.g., verbal, performance, and full scale IQs), the lowest score is used. IQs obtained from standardized tests that deviate from a mean of 100 and a standard deviation of 15 require conversion to a percentile rank. In special circumstances, such as the assessment of individuals with sensory, motor, or communication abnormalities, or those whose culture

and background are not principally English-speaking, measures such as the Test of Nonverbal Intelligence, Third Edition (TONI-3), Leiter International Performance Scale-Revised (Leiter-R), or Peabody Picture Vocabulary Test-Third Edition (PPVT-III) may be used.

47. Sources of information about functioning include professional health care providers, records from work evaluations and rehabilitation progress notes.
48. *Disability Evaluation Under Social Security, op. cit.*, §12.02.
49. *Disability Evaluation Under Social Security, op. cit.*, §§10.00 and 10.06.
50. Not including other chromosomal abnormalities such as mosaic Down syndrome, fragile X syndrome, phenylketonuria, and fetal alcohol syndrome, which produce a pattern of multiple impairments but manifest in a wide range of impairment severity.
51. Documentation must include confirmation of a positive diagnosis by a clinical description of the usual abnormal physical findings associated with the condition and definitive laboratory tests, including chromosomal analysis. Medical evidence that is persuasive that a positive diagnosis has been confirmed by appropriate laboratory testing, at some time prior to evaluation, is acceptable in lieu of a copy of the actual laboratory report.
52. Part B of the Listings contains medical criteria that apply to children below the age of 18 where criteria in Part A do not give appropriate consideration to the particular disease process in childhood.
53. There are significant differences between the listings for adults and the listings for children. There are disorders found in children that have no real analogy in adults; hence, the differences in the diagnostic categories for children. The presentation of mental disorders in children, particularly the very young child, may be subtle and of a character different from the signs and symptoms found in adults. The activities appropriate to children, such as learning, growing, playing, maturing, and school adjustment, are also different from the activities appropriate to the adult and vary widely in the different childhood stages.
54. *Disability Evaluation Under Social Security, op. cit.*, §112.05.
55. Paragraphs A, B and C contain criteria that describe disorders that are severe enough to prevent any gainful activity without the need for any additional assessment of functional limitations. For Paragraphs D and F, the degree of functional limitation the additional impairment(s) imposes will be assessed to determine if it causes more than minimal functional limitations. If so, the additional impairment(s) will be found to impose an additional and significant limitation of function.
56. After 36 months, motor function is no longer felt to be a primary determinant of mental function.
57. Social function in older infants and toddlers is measured in terms of the development of relatedness to people (e.g., bonding and stranger anxiety) and attachment to animate or inanimate objects.
58. When standardized tests of social or cognitive function and adaptive behavior are used as the measure of functional parameters, a valid score that is two standard deviations below the norm for the test will be considered a marked restriction.
59. Personal functioning in preschool children pertains to self-care; i.e., personal needs, health, and safety. Development of self-care skills is measured in terms of the child's increasing ability to help himself/herself and to cooperate with others in taking care of these needs.
60. As documented by an appropriate standardized test or other medical findings.

61. i.e, From birth to the attainment of age 1.
62. *Disability Evaluation Under Social Security, op. cit.*, §112.12.
63. Section 1905 (a) of the Social Security Act (42 U.S.C. 1396d), and 42 CFR 435.540-541. Some States use more restrictive Medicaid eligibility requirements that pre-date SSI.
64. Medicare beneficiaries who have low incomes and limited resources may also receive help from the Medicaid program. For such persons who are eligible for full Medicaid coverage, the Medicare health care coverage is supplemented by services that are available under their State's Medicaid program, according to eligibility category. According to the Medicare law, disabled- and-working individuals who previously qualified for Medicare because of disability, but who lost entitlement because of their return to work (despite the disability), are allowed to purchase Medicare coverage. If these persons have incomes below 200 percent of the poverty level but do not meet any other Medicaid assistance category, they may qualify to have Medicaid pay their Medicare premiums as Qualified Disabled and Working Individuals.
65. 42 CFR 440.150.
66. 42 CFR 441.303. The populations served through the waiver program have also changed since the implementation of the program. Originally, the waiver program was composed exclusively of A/D, MR/DD, and combined A/D and MR/DD programs. As changes in regulations have allowed the waivers to serve other populations, including children with special health needs, adults and children with AIDS, and people with traumatic brain injuries (TBI), the number of states implementing such programs has increased. The number of waiver programs serving people with chronic mental illness has not increased and the mental health waivers currently operating serve children.
67. The Social Security Act specifically lists seven services which may be provided in HCBS waiver programs: (1) case management (services which assist individuals access needed medical, social, educational, and other services); (2) homemaker/home health aide services: (assistance with general household activities and ongoing monitoring of the well being of the individual; assistance with specific health problems provided by a health care professional); (3) personal care services: (direct supervision and assistance in daily living skills and activities (e.g., assisting the individual with bathing and grooming); (4) adult day health: (adult day care setting which provides more health-related services); (5) habilitation: (services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community based settings; and includes pre-vocational, educational, and supported employment); (6) respite care: (short-term supervision, assistance, and care provided due to the temporary absence or need for relief of recipient's primary care-givers. This may include overnight, in-home or out-of-home services); and (7) other services needed to avoid being placed in a medical facility. The law further permits day treatment or other partial hospitalization services, psycho-social rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness.
68. LeBlanc, A. J., Tonner, M. C. and C. Harrington. (Winter 2000). "Medicaid 1915(c) Home and Community-Based Services Waivers Across the States." Health Care Financing Review, 22, 2, 163.
69. Lutzky, S., Alecxih, L. B., Duffy, J. and C. Neill. (June 15, 2000). Review of the Medicaid 1915(c) Home and Community Based Services Waiver Program Literature and Program Data: Final Report. The Lewin Group, pp. 14-16.
70. 42 CFR 483.102 (b)(3).
71. 42 CFR 435.1009.

72. Letter from the Director, Center for Medicaid and State Operations to State Medicaid Directors dated January 10, 2001 (SMDL #01-006 - Olmstead Update No: 4).
73. The Education for All Handicapped Children Act of 1975, later amended (P.L. 101-476 and P. L. 105-17) and recodified as the Individuals with Disabilities Education Act (IDEA).
74. 34 CFR 300.7(c)(6): “Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.”
75. 34 CFR 300.7(b): “Children aged 3 through 9 experiencing developmental delays. The term ‘child with a disability’ for children aged 3 through 9 may, at the discretion of the State and LEA and in accordance with §300.313, include a child - (1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (2) Who, by reason thereof, needs special education and related services.”
76. Regulations adopting the terms “mental retardation” and “developmentally delayed” are pending.
77. As used in the South Carolina special education statute.
78. As used in the South Carolina special education regulations.
79. Includes the District of Columbia.
80. 34 CFR 300.7(c)(6).
81. Section 16-39-2(4) of the Code of Alabama.
82. Section 130(b) of the Alaska Administrative Code.
83. Section 1B of Article 4, Title 7 of the Arizona Administrative Code. Note, however, that Section 15-761(2)(f) of the Arizona Revised Statutes refers to “mild, moderate or severe mental retardation” as a category of “children with disabilities.”
84. Sections 206.1 and 608.5 of the Rules and Regulations Governing Special Education and Related Services of the Arkansas Department of Education.
85. Section 3001 of Title 5, Division 1, Chapter 3 of the California Code of Regulations.
86. Section 22-20-103(1.5) of the Colorado Revised Statutes.
87. State of Connecticut. (2000). Guidelines for Identifying Children With Intellectual Disability/Mental Retardation. Hartford, CN: Connecticut Department of Education.
88. Paragraph 4.9 of Chapter 925 of the Delaware Department of Education Regulations (The Administrative Manual for Special Education Services).
89. <sup>1</sup> Section 6A-6.03011 of the Administrative Rules of the Florida State Board of Education.
90. *Ibid.* An educable mentally handicapped student is a student who is mildly impaired in intellectual and adaptive behavior and whose development reflects a reduced rate of learning. The measured intelligence of an educable mentally handicapped student generally falls between two (2) and three (3) standard deviations below the mean and the assessed adaptive behavior falls below that of other students of the same age and socio-cultural group.

91. *Ibid.* A trainable mentally handicapped student is a student who is moderately or severely impaired in intellectual and adaptive behavior and whose development reflects a reduced rate of learning. The measured intelligence of a trainable mentally handicapped student generally falls between three (3) and five (5) standard deviations below the mean and the assessed adaptive behavior falls below that of other students of the same age and socio-cultural group.
92. *Ibid.* A profoundly mentally handicapped student is a student who is profoundly impaired in intellectual and adaptive behavior and whose development reflects a reduced rate of learning. The measured intelligence of a profoundly mentally handicapped student generally falls below five (5) standard deviations below the mean and the assessed adaptive behavior falls below that of other students of the same age and socio-cultural group.
93. Section 160-4-7-02 (Appendix E) of the Rules of the Georgia State Board of Education Pertaining to Special Education (Exceptional Students).
94. *Ibid.* Mild intellectual disability is defined as: “(1) Intellectual functioning ranging between an upper limit of approximately 70 to a lower limit of approximately 55; and (2) Deficits in adaptive behavior that significantly limit an individual’s effectiveness in meeting the standards of maturation, learning, personal independence or social responsibility, and especially school performance that is expected of the individual’s age level and cultural group, as determined by clinical judgment.”
95. *Ibid.* Moderate intellectual disability is defined as: “(1) Intellectual functioning ranging from an upper limit of approximately 55 to a lower limit of approximately 40; and (2) Deficits in adaptive behavior that significantly limit an individual's effectiveness in meeting the standards of maturation, learning, personal independence or social responsibility, and especially school performance that is expected of the individual’s age-level and cultural group as determined by clinical judgment.”
96. *Ibid.* Severe intellectual disability is defined as: “(1) Intellectual functioning ranging from an upper limit of approximately 40 to a lower limit of approximately 25; and (2) Deficits in adaptive behavior that significantly limit an individual’s effectiveness in meeting the standards of maturation, learning, personal independence or social responsibility and especially school performance that is expected of the individual’s age-level and cultural group as determined by clinical judgment.”
97. *Ibid.* Profound intellectual disability is defined as: “(1) Intellectual functioning below approximately 25; and (2) Deficits in adaptive behavior that significantly limit an individual’s effectiveness in meeting the standards of maturation, learning, personal independence or social responsibility and especially school performance that is expected of the individual's age-level and cultural group, as determined by clinical judgment.”
98. Section 22 of Title 8, Chapter 56 of the Hawaii Administrative Rules.
99. Section 8(b)(iii) of the Administrative Rules of the Idaho State Board of Education.
100. Section 226.75 of Title 23 of the Illinois Administrative Code.
101. Section 9(a) of Title 511, Article 7, Rule 26 of the Indiana State Board of Education.
102. Section 9(c) of Title 511, Article 7, Rule 26 of the Indiana State Board of Education. “A student with a mild mental disability will generally exhibit: (1) measured intelligence two (2) or more standard deviations below the mean or average of the testing instrument used; and (2) an adaptive behavior profile within the range of a mild mental disability.”
103. Section 9(d) of Title 511, Article 7, Rule 26 of the Indiana State Board of Education. “A student with a moderate mental disability will generally exhibit: (1) measured intelligence three (3) or more standard

deviations below the mean or average of the testing instrument used; and (2) an adaptive behavior profile within the range of a moderate mental disability.”

104. Section 9(e) of Title 511, Article 7, Rule 26 of the Indiana State Board of Education. “A student with a severe mental disability will generally exhibit: (1) measured intelligence four (4) or more standard deviations below the mean or average of the testing instrument used; and (2) an adaptive behavior profile within the range of a severe mental disability.”
105. Section 5 of Chapter 41 of Part 281 of the Iowa Administrative Code. “Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects an individual’s educational performance.”
106. Kansas Administrative Regulations 91-40-1(oo).
107. Section 200(1)(e) of Chapter 157 of the Kentucky Revised Statutes.
108. Section 904 of Bulletin 1706 of the Louisiana State Board of Education.
109. Section 3.7 of Chapter 101 of the Special Education Regulations of the Maine Department of Education. “Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behaviors and manifested during the developmental period that adversely affect the student's educational performance.”
110. Section 3(B)(35) of Title 13A.05.01 of the Code of Maryland Agency Regulations.
111. Section 28.02(7)(c) of Chapter 603 of the Code of Massachusetts Regulations.
112. Michigan law and regulations do not define the overall term, “mentally impaired.”
113. Rule 340.1705 of the Michigan Administrative Code.
114. Rule 340.1704 of the Michigan Administrative Code.
115. Rule 340.1703 of the Michigan Administrative Code.
116. Section 1333(1) of Chapter 3525 of the Minnesota Rules.
117. Sections 1333(2) and (3) of Chapter 3525 of the Minnesota Rules.
118. Mississippi Department of Education, Proposed Policies and Procedures Regarding Children with Disabilities under IDEA Amendments of 1997 (Appendix A).
119. The 2001 Missouri IDEA, Part B State Plan.
120. Section 401(4) and (5) of Title 20, Chapter 7 of the Montana Code Annotated 2001.
121. Section 3.07E of Title 92, Chapter 51 of the Nebraska Administrative Code.
122. Section 55(1) of Chapter 388 of the Nevada Administrative Code.
123. Section 2.9 of Chapter Ed 1100 of the Administrative Rules of the New Hampshire State Board of Education.
124. New Jersey statutes use the term “mentally retarded;” New Jersey regulations use the term “cognitively impaired.”
125. Section 8 of Title 18A, Chapter 46 of the New Jersey Permanent Statutes. As used in this context, the term “mentally retarded” is not defined by the New Jersey statutes.

126. Section 9(a) of Title 18A, Chapter 46 of the New Jersey Permanent Statutes.
127. Section 9(b) of Title 18A, Chapter 46 of the New Jersey Permanent Statutes.
128. Section 9(c) of Title 18A, Chapter 46 of the New Jersey Permanent Statutes.
129. Section 3.5(c)(1) of Title 6A, Chapter 14 of the New Jersey Administrative Code.
130. Section 7.5.5 of Title 6, Chapter 5, Part 2 of the Policies of the New Mexico Department of Education (1997).
131. Section 200.1(zz)(7) of the Regulations of the New York Commissioner of Education (Policy 00-05). Significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student’s educational performance.
132. Section 1501A(5) of the Procedures Governing Programs and Services for Children with Disabilities of the North Carolina State Board of Education.
133. *Parent Guide to Special Education*, North Dakota Department of Public Instruction (August 1999).
134. The term “cognitive disability” is used in the latest draft of amendments to the Ohio Administrative Code proposed by the State Department of Education.
135. Rule 3301-51-01(N) of the Ohio Administrative Code. Rule 3301-51-01(b) of the Rules for the Education of Children with Disabilities 3-21 Years of Age, Ohio Department of Education (Draft 2.1): “‘Cognitive disability (mental retardation)’ means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child’s educational performance.” (i) “Significantly subaverage general intellectual functioning’ refers to an intelligence quotient of seventy or below as determined through a measure of cognitive functioning administered by a qualified psychologist using a test designed for individual administration. Based on a standard error of measurement and clinical judgment, a child may be determined to have significant subaverage general intellectual functioning with an intelligence quotient not to exceed seventy-five. (ii) ‘Deficits in adaptive behavior’ means deficits in two or more applicable skill areas occurring within the context of the child’s environments typical of the person’s age peers.”
136. The term ”mental retardation” is used in the latest draft of amendments to state special education regulations proposed by the Oklahoma State Department of Education.
137. Sections 70-18-109.5(5) and (11) of the Oklahoma Statutes (for both “educable mentally handicapped” and “trainable mental handicapped”), and Draft Special Education Policies and Procedures Manual (May 2000) of the Oklahoma State Department of Education (for “mental retardation”).
138. Section 3(f) of Oregon Administrative Rule 581-015-0005, last amended in 2000.
139. Section 14.102(a)(2)(ii) of the Pennsylvania Code, adopted June 8, 2001, incorporating 34 CFR 300.7(a) and (c)), published at 64 FR 12418—12469 on March 12, 1999.
140. Section 300.7(6) of the Regulations of the Rhode Island Board of Regents for Elementary and Secondary Education Governing the Education of Children with Disabilities (December 2000).
141. State regulations define “mental disability” to be: “mental retardation,” and in turn, define that term to mean: “significantly subaverage general intellectual functioning existing concurrently with deficits in

adaptive behavior and manifested during the developmental period that adversely affects a student's educational performance.”

142. Regulations 43-243 (“Special Education, Education of Students with Disabilities”) and 43-243.1, (“Criteria for Entry into Programs of Special Education for Students with Disabilities”) of the South Carolina State Board of Education.
143. Section 24.01(11) of Article 24:05 of the Rules of the South Dakota Board of Education.
144. Section 1(15)(i) of Chapter 0520-1-9 of the Rulemaking Hearing Rules of the Tennessee State Board of Education.
145. Section 89.1040(a)(c)(5) of Title 19 of the Texas Administrative Code, last amended in 2001.
146. Section 1.E(23) of the Utah State Board of Education Special Education Rules. “Significantly below-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.”
147. Section 2362.1(a) of the Special Education Regulations of the Vermont Department of Education, Vermont State Board of Education Manual of Rules and Practices, effective August 2001.
148. Section 10 of Title 8, Chapter 80 of the Virginia Administrative Code.
149. Section 134 of Title 392, Chapter 392-172 of the Washington Administrative Code.
150. Section 4.1.3(g) of Title 126, Series 16 of the Legislative Rules of the West Virginia State Board of Education.
151. Section 11.36(1)(a) of Chapter PI 11 (Children with Disabilities) of the Wisconsin Administrative Code, effective July 2001.
152. Section 6(h) of Chapter 7 of the Rules Governing Services for Children with Disabilities of the Wyoming Department of Education.
153. The population eligible for general assistance varies considerably by state, but usually consists of those individuals ineligible or not yet qualified for SSI (e.g., an able-bodied individual or an individual with a disability not severe enough to qualify for SSI) and/or families and children categorically ineligible for TANE (e.g., a child living with an unrelated caretaker). A few states do provide General Assistance to all persons categorically ineligible for SSI or TANF.
154. In order to distinguish General Assistance programs from emergency assistance programs.
155. Interim assistance is financial assistance for persons waiting to become eligible for SSI or Social Security Disability Insurance (SSDI).
156. Gallagher, L. J., Uccello, C., Pierce, A., & Reidy, E. (1999). State General Assistance Programs: 1998. Washington, DC: The Urban Institute.
157. Six states have at least one county that has chosen to provide General Assistance without state involvement: Florida, Georgia, Kentucky, Montana, North Carolina and North Dakota. The remaining ten states have neither a state GA program or a local GA program: Alabama, Arkansas, Louisiana, Mississippi, Oklahoma, South Carolina, Tennessee, Texas, West Virginia, and Wyoming.
158. Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri,

Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, Washington, and Wisconsin. Nebraska has a uniform state GA program for disabled individuals and also requires counties to provide General Assistance to needy residents not covered by the state GA program. Twenty-four of these states have statewide General Assistance programs with uniform eligibility rules; nine do not have uniform state GA programs, but require all counties to provide General Assistance. The two remaining states, Wisconsin and Virginia, do not provide statewide assistance, but do provide supervision and funding for counties that choose to have a program.

- <sup>159</sup>. Section 63 of Title 37, Chapter 23 of the Mississippi Laws.

## Research Summary: E

### **Aspects of Citizenship, Legal Status and Criminal Justice**

This *Research Summary* addresses the third primary area of policy research: the use of a diagnosis of “mental retardation” or of an alternative term to determine six important aspects of citizenship, legal status and criminal justice. Specifically, with respect to each of these aspects of citizenship, legal status and criminal justice, it seeks to answer two important policy research questions:

- ! To what extent is a diagnosis of “*mental retardation*” currently used?
- ! To what extent has the use of *alternative terms* for determining elig-ibility been permitted or mandated?

As identified in the Final Research Bibliography, these *alternative terms* are

- ! *Mental deficiency*
- ! *Mental disability or handicap*
- ! *Intellectual disability or impairment*
- ! *Organic mental disorder*; and
- ! *Developmental disability or delay.*

### Conclusions

Project staff has explored the use of a diagnosis of “mental retardation” (or of an alternative term) in connection with six important aspects of citizenship, legal status and criminal justice. As identified in the Final Research Bibliography, these aspects are:

- ! Immigration status and eligibility for citizenship
- ! Eligibility for voting in federal elections and military service;
- ! Federal non-discrimination and equal opportunity protections;
- ! Involuntary termination of parental rights under state law;
- ! Legal competence or capacity under state law; and
- ! Criminal responsibility, competence to stand trial and sentencing.

U.S. immigration and naturalization laws classify persons with certain physical or mental disorders as ineligible for visas or for other admission to the United States. However, the exclusion of a person with “*mental retardation*” may be waived based in part on a medical report that includes details of any hospitalization or institutional care or treatment and a report of a psychiatric examination conducted by a psychiatrist that also provides an evaluation of intelligence. With respect to naturalization (citizenship), applicants with a “permanent physical or *developmental disability* or mental impairment may be exempted from general requirements that all applicants must be able to speak, read, write, and understand basic English and be able to demonstrate knowledge and understanding of the fundamentals of U.S. history and principles of government.

None of the three Federal laws that bear (or might bear) directly on the eligibility of persons with disabilities to vote in Federal elections makes use either of the term *mental retardation* or of any of the *alternative terms*. While eligibility for enlistment in the armed services is not expressly precluded for persons with *mental retardation*, it is dependent in part on scores achieved on the Armed Forces Qualification Test. While neither the Americans with Disabilities Act nor the Rehabilitation Act of 1973 specifically refers to persons with *mental retardation* (or uses any of the *alternative terms*), Federal regulations implementing both laws define the term “physical or mental impairment” to include *mental retardation*. The Civil Rights of Institutionalized Persons Act protects institutionalized persons with psychiatric or *developmental disabilities*.

Regulations implementing the Fair Housing Act defined a “mental or physical impairment” to expressly include *mental retardation*.

In four states, standards governing the involuntary termination of parental rights use a diagnosis of “*mental retardation*” as a basis for such a decision. Two states use a diagnosis of *developmental disability* and twenty-two states use a diagnosis of *mental deficiency* as grounds for the termination of parental rights. State have also established standards for the appointment of guardians and conservators for persons who are determined to be legally incompetent or to lack legal capacity (i.e., adult status). In determining legal competency and capacity leading to the appointment of guardians and conservators, state laws have established classification structures that include diagnoses of *mental retardation* (20 states), *mental deficiency* (20 states), and *developmental disability* (14 states). Finally, many states also have established criteria for determining criminal responsibility, competence to stand trial and sentencing that in part rely on a diagnosis of *mental retardation* (14 states) or of an *alternative term* (e.g., *mental deficiency*).

### **Definition and Scope**

As described in detail in the Final Research Bibliography, while the terms “mental retardation,” “mentally retarded” and “retarded” occur within structure of some government programs, other terms are frequently used to identify individuals with the same or similar characteristics. The terms that have been identified as being synonymous (or roughly synonymous) to the term “mental retardation” are: *mental deficiency*; *mental disability or handicap*; *intellectual disability*; and *organic mental disorder*. While over-inclusive (i.e., it includes all persons with mental retardation along with others), the terms “*developmental disability*” and “*developmental delay*” have also been identified as “alternative terms” for purpose of project research efforts. The use of a diagnosis of “mental retardation” (or of an alternative term) has been explored in connection with six important aspects of citizenship, legal status and criminal justice:

- ! Immigration status and eligibility for U.S. citizenship
- ! Eligibility for voting and military service;
- ! Federal non-discrimination and equal opportunity protections;
- ! Involuntary termination of parental rights under state law;
- ! Legal competence or capacity under state law; and
- ! Criminal responsibility, competence to stand trial and sentencing.

### **Findings**

Findings of project staff regarding the current use of a diagnosis of *mental retardation* and/or of *alternative terms* in connection with each of these six aspects of citizenship, legal status and criminal justice are presented separately below.

#### **(1) *Immigration Status and Eligibility for Citizenship***

U.S. immigration and naturalization laws contain special provisions governing the immigration and citizenship status of persons who are “*mentally retarded*” and who have a “*developmental disability*.” With respect to immigration, Federal law<sup>1</sup> provides that certain “classes of aliens” are ineligible for visas or for other admission to the United States. These classes of individuals include persons who are:

**determined (in accordance with regulations prescribed by the Secretary of Health and Human Services in consultation with the Attorney General) to either “have a physical or mental disorder and behavior associated with the disorder that may pose, or has posed, a threat to the property, safety, or welfare of the alien or others,” or “Have had a physical or mental disorder and a history of behavior associated with the disorder, which behavior has posed a threat to the property, safety, or welfare of the alien or others and which behavior is likely to recur or to lead to other harmful behavior.”<sup>2</sup>**

The law further provides that for the purpose of “determining whether aliens ... belong to any of the classes inadmissible under this Act, by reason of being afflicted with any of the diseases or mental or physical defects or disabilities,” aliens may be detained and subjected to “physical and mental examination” made by medical officers of the United States Public Health Service.<sup>3</sup> The exclusion of a person with “mental retardation” may be waived<sup>4</sup> upon the filing and approval of a waiver (INS Form I-601, Application for Waiver of Ground of Excludability). Form I-601 requires that an applicant with a “mental condition” who is mentally retarded attach a statement that arrangements have been made for the submission of a medical report.<sup>5</sup> This report must, in turn, contain:

**a complete medical history of the alien, including details of any hospitalization or institutional care or treatment for any physical or mental condition; findings as to the current physical condition of the alien... and other pertinent diagnostic tests; and findings as to the current mental condition of the alien, with information as to prognosis and life expectancy and with a report of a psychiatric examination conducted by a psychiatrist who shall, in the case of *mental retardation*, also provide an evaluation of intelligence.**<sup>6</sup>

With respect to naturalization (citizenship), Federal law provides that applicants must be able to speak, read, write, and understand basic English and be able to demonstrate knowledge and understanding of the fundamentals of U.S. history and principles of government. INS regulations<sup>7</sup> currently exempt applicants from these requirements if the applicant has a “permanent physical or developmental disability or mental impairment making it impossible to meet” the English language and civics requirements. To implement this policy, INS Form N-648 (Medical Certification for Disability Exceptions) requires physicians and clinical psychologists to establish that the applicant has a physical or developmental disability or mental impairment that has impaired an individual's functioning so severely that the individual is unable to learn or demonstrate knowledge of English and/or U.S. history and government (civics). Applicants with disabilities who are granted medical waivers are still required to meet all other requirements for naturalization including taking the Oath of Allegiance but adjudicators must make reasonable accommodations (such as simplifying questions or allowing applicant to use predetermined physical motions or signals) to demonstrate that they understand the nature of the oath and agree to it.

## ***(2) Eligibility for Voting and Military Service***

More than 40 states have statutory or constitutional provisions that disenfranchise various groups of people with mental disabilities, including those who are under guardian-ship, people who have been adjudicated "mentally incompetent," "insane people," "idiots" and "lunatics." While three important Federal laws bear on the eligibility of persons with disabilities to vote in Federal elections, none makes use of either the term mental retardation or of any of the alternative terms. The National Voter Registration Act requires states to designate as voter registration agencies: (1) all offices that are primarily engaged in providing disability services and that receive state funds, and (2) all offices that provide public assistance.<sup>8</sup> These agencies must make available to their clients voter registration forms and assistance in completing them, and must accept completed applications and transmit them to state officials.<sup>9</sup> The Voting Rights Act of 1965 contains a provision requiring that “[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice ....”<sup>10</sup> The Voting Accessibility for the Elderly And Handicapped Act applies to federal elections and requires each political subdivision responsible for conducting elections to assure that all polling sites for federal elections are accessible to voters with disabilities and voters 65 and older.<sup>11</sup>

Eligibility for enlistment in the armed services is not expressly precluded for persons referred to as having mental retardation or described through the use of any of the alternative terms. Eligibility is, however, dependent in part on scores achieved by candidates on the Armed Services Vocational Aptitude Battery, incorporating a total of ten tests, four of which comprise the Armed Forces Qualification Test (AFQT). By law, persons whose AFQT scores fall into Category V and individuals who have not graduated from high school whose scores fall into Category IV are not eligible for enlistment. However, U.S. Coast Guard requirements for

obtaining a merchant\_mariner's documents or licenses expressly treat mental retardation as a disqualifying condition.<sup>12</sup>

### ***(3) Federal Non-Discrimination and Equal Opportunity Protections***

The Americans with Disabilities Act (ADA) prohibits discrimination against persons with disabilities in employment, State and local government, public accommodations, commercial facilities, transportation and telecommunications. The law defines an individual with a disability to be “a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment,” but does not specifically list persons with *mental retardation*, *developmental disability*, or in any other disability subcategory. Title I of the Act requires employers with 15 or more employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities available to others. Regulations issued by the Equal Employment Opportunity Commission to implement Title I define the term “disability” to include “a physical or mental impairment that substantially limits one or more of the major life activities of such individual” and the term “physical or mental impairment” to mean:

Any mental or psychological disorder, such as *mental retardation*, *organic brain syndrome*, *emotional or mental illness*, and *specific learning disabilities*.<sup>13</sup>

Title II of the ADA requires that State and local governments give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities (e.g. public education, employment, transportation, recreation, health care, social services, courts, voting, and town meetings), and prohibits discrimination against people with disabilities in the provision of public transportation services such as city buses and public rail transit. Title III prohibits discrimination (e.g., exclusion, segregation, and unequal treatment) by businesses and nonprofit service providers that are public accommodations, privately operated entities offering certain types of courses and examinations, privately operated transportation, and commercial facilities. Regulations issued by the Department of Justice to implement both Title II and Title III adopt the same definition of both “disability” and of “physical or mental impairment” used for Title I and add the following:

the phrase “physical or mental impairment” includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.<sup>14</sup>

The Rehabilitation Act of 1973 contains two important non-discrimination provisions designed to protect the civil rights of persons with disabilities. Section 503 of the Act prohibits discrimination in employment by Federal contractors and requires such contractors to undertake affirmative action to employ and advance persons with disabilities. The Rehabilitation Act defines a person with a disability to be: “Any person who has a record of, or is regarded as having a physical or mental impairment which substantially limits one or more major life activities such as caring for one’s self, performing manual tasks, walking, speaking, breathing, learning and working.”<sup>15</sup> Implementing regulations issued by the Department of Labor define “physical or mental impairment” to include:

Any mental or psychological disorder, such as *mental retardation*, *organic brain syndrome*, *emotional or mental illness*, and *specific learning disabilities*.

Section 504 of the Act provides that: “No otherwise qualified individual with handicaps in the United States...shall, solely by reason of her or his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance....”<sup>16</sup> Implementing regulations issued by the Department of Health and Human Services define the term “handicapped person” to mean “any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded

as having such an impairment.“ The regulations further define the phrase “physical or mental impairment” to include:

any mental or psychological disorder, such as *mental retardation*, organic brain syndrome, emotional or mental illness, and specific learning disabilities.<sup>17</sup>

The Civil Rights of Institutionalized Persons Act (CRIPA) 1980 protects institutionalized persons with psychiatric or developmental disabilities against constitutional violations (in terms of conditions of confinement resident in State and local government institutions such as prisons, jails, pretrial detention centers, juvenile correctional facilities, publicly operated nursing homes, and institutions.

The Fair Housing Act as amended in 1988 prohibits housing discrimination on the basis of race, color, religion, sex, disability, familial status, and national origin handicap. In private housing, housing that receives Federal financial assistance, and State and local government housing. Disability is defined by the Act as a “mental or physical impairment which substantially limits one or more major life activities.” Implementing regulations issued by the Department of Housing and Urban Development expressly include within that definition:

hearing, mobility and visual impairments, chronic alcoholism, chronic mental illness, AIDS, AIDS Related Complex and *mental retardation*.<sup>18</sup>

Section 2251(a)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, require manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are accessible to and usable by persons with disabilities. Neither the law nor implementing regulations makes any reference either to the term mental retardation or to any of the alternative terms. Similarly, the Air Carrier Access Act: prohibits discrimination in air transportation by domestic and foreign air carriers against qualified individuals with physical or mental impairments. Neither the law nor implementing regulations makes any reference either to the term mental retardation or to any of the alternative terms.

***(4) Involuntary Termination of Parental Rights Under State Law***

Laws in all 50 states and the District of Columbia currently outline standards for the involuntary termination by state courts of parental rights. Detailed, state-by-state notes on these standards are attached as Appendix B as 3. Notes on Involuntary Termination of Parental Rights presents an overview of the results of a study conducted by project staff of the terms currently used in state statutes relating to the grounds for such an involuntary termination by state courts. The first column shows the state abbreviation. The second column shows whether or not the state uses a diagnosis of “mental retardation” or of an *alternative term* as a factor in making such a determination and, if so, indicates what *alternative term* is used.

A review of the information presented on **Table 1** (below) shows that in arriving at state court determinations relating to the involuntary termination of parental rights, only 4 states (DE, HA, IL and KY) expressly use a diagnosis of *mental retardation*. Of the remaining states and the District of Columbia:

- ! 22 states use a diagnosis of *mental deficiency*;
- ! 18 states and the District of Columbia use neither a diagnosis of *mental retardation* nor any alternative diagnosis;
- ! 3 states (FL, IA and ND) rely on an assessment of *mental capacity*;
- ! 2 states (CA and WI) use a diagnosis of *developmental disability*; and
- ! 2 states (MO and TN) use other assessments of “mental condition.”

**Table 1**

**Grounds for the Involuntary Termination of Parental Rights**

State	Factor(s) Supporting Involuntary Termination of Rights
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<b>State</b>	<b>Factor(s) Supporting Involuntary Termination of Rights</b>
<b>AL</b>	“ <i>mental deficiency</i> ...of the parent .. as a factor to be considered” <sup>19</sup>
<b>AK</b>	“parent or guardian...has a mental illness or <i>mental deficiency</i> of such nature and duration that ... the parent or guardian will be incapable of caring for the child without placing the child at substantial risk of physical or mental injury....” <sup>20</sup>
<b>AZ</b>	“parent is unable to discharge the parental responsibilities because of... <i>mental deficiency</i> ...” <sup>21</sup>
<b>AR</b>	“ <i>mental deficiencies</i> ” are found to be a reason for the inability or incapacity of a parent to remedy the subsequent issues or factors or rehabilitate the parent's circumstances which prevent return of the juvenile to the family home. <sup>22</sup>
<b>CA</b>	if a child has or is likely to suffer “serious physical harm or illness as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child due to the parent's or guardian's... <i>developmental disability</i> ....” <sup>23</sup>
<b>CO</b>	“clear and convincing evidence of... <i>mental deficiency</i> of the parent of such duration or nature as to render the parent unlikely, within a reasonable period of time, to care for the ongoing physical, mental, and emotional needs of the child.” <sup>24</sup>
<b>CN</b>	No explicit reference to the <i>mental retardation</i> or other disability of a parent as a ground for the involuntary termination of parental rights.
<b>DE</b>	If a parent is "mentally incompetent," <sup>25</sup> “and defines that term to mean: “the inability to discharge parental responsibilities by reason of... <i>mental retardation</i> or <i>mental deficiency</i> .” <sup>26</sup>
<b>DC</b>	No explicit reference to the <i>mental retardation</i> or other disability of a parent as a ground for the involuntary termination of parental rights.
<b>FL</b>	“...a parent...has been judicially declared incapacitated with restoration of competency found to be medically improbable.” <sup>27</sup>
<b>GA</b>	“a medically verifiable deficiency of the parent's physical, mental, or emotional health of such duration or nature as to render the parent unable to provide adequately for the physical, mental, emotional, or moral condition and needs of the child.” <sup>28</sup>
<b>HA</b>	If a parent is “ <i>mentally retarded</i> and incapacitated from giving consent to the adoption of or from providing now and in the foreseeable future the care necessary for the well-being of the child.” <sup>29</sup>
<b>ID</b>	If a parent “is unable to discharge parental responsibilities because of... <i>mental deficiency</i> ,....” <sup>30</sup>
<b>IL</b>	“inability to discharge parental responsibilities supported by competent evidence ...of... <i>mental retardation</i> ...or <i>developmental disability</i> ....” <sup>31</sup> In this context, "mental retardation" is defined as “significantly sub-average general intellectual functioning which exists concurrently with impairment in adaptive behavior and which originates before the age of 18 years.” <sup>32</sup> "Developmental disability" is defined as “a disability which is attributable to... <i>mental retardation</i> ... or...any other condition which results in impairment similar to that caused by <i>mental retardation</i> and which requires services similar to those required by <i>mentally retarded</i> persons.” <sup>33</sup>
<b>IN</b>	No explicit reference to the <i>mental retardation</i> or other disability of a parent as a ground for the involuntary termination of parental rights.
<b>IA</b>	If a parent’s “mental capacity or condition ... results in the child not receiving adequate care.” <sup>34</sup>
<b>KS</b>	If “a <i>mental deficiency</i> of the parent, of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental and emotional needs of the child.” <sup>35</sup>

<b>State</b>	<b>Factor(s) Supporting Involuntary Termination of Rights</b>
<b><u>KY</u></b>	“ <i>mental retardation</i> “ of the parent, <sup>36</sup> and defines the term “mentally retarded person” to be: “a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.” <sup>37</sup>
<b><u>LA</u></b>	If the lack of any reasonable expectation of significant improvement in the parental misconduct in the near future may be evidenced by... <i>mental deficiency</i> ...that renders the parent unable or incapable of exercising parental responsibilities without exposing the child to a substantial risk of serious harm.” <sup>38</sup> In this context, “mental deficiency” is defined as: “significantly subaverage intellectual functioning existing concurrently with deficits in adaptive behavior, as determined by a psychiatrist or psychologist and manifested during the developmental period.” <sup>39</sup>
<b><u>ME</u></b>	No explicit reference to the <i>mental retardation</i> or other disability of a parent as a ground for the involuntary termination of parental rights.
<b><u>MD</u></b>	No explicit reference to the <i>mental retardation</i> or other disability of a parent as a ground for the involuntary termination of parental rights.
<b><u>MA</u></b>	No explicit reference to the <i>mental retardation</i> or other disability of a parent as a ground for the involuntary termination of parental rights.
<b><u>MI</u></b>	No explicit reference to the <i>mental retardation</i> or other disability of a parent as a ground for the involuntary termination of parental rights.
<b><u>MN</u></b>	No explicit reference to the <i>mental retardation</i> or other disability of a parent as a ground for the involuntary termination of parental rights.
<b><u>MS</u></b>	If “the parent exhibits ongoing behavior which would make it impossible to return the child to the parent's care and custody because the parent has a diagnosable condition unlikely to change within a reasonable time such as... severe <i>mental deficiencies</i> , which condition makes the parent unable to assume minimally, acceptable care of the child.” <sup>40</sup>
<b><u>MO</u></b>	“Consider and make findings” on the “mental condition which is shown by competent evidence either to be permanent or such that there is no reasonable likelihood that the condition can be reversed and which renders the parent unable to knowingly provide the child the necessary care, custody and control.” <sup>41</sup>
<b><u>MT</u></b>	No explicit reference to the <i>mental retardation</i> or other disability of a parent as a ground for the involuntary termination of parental rights.
<b><u>NE</u></b>	If “the parents are unable to discharge parental responsibilities because of... <i>mental deficiency</i> and there are reasonable grounds to believe that such condition will continue for a prolonged indeterminate period.” <sup>42</sup>
<b><u>NV</u></b>	”... <i>mental deficiency</i> of the parent which renders the parent consistently unable to care for the immediate and continuing physical or psychological needs of the child for extended periods of time” as a condition “which may diminish suitability as a parent.” <sup>43</sup>
<b><u>NH</u></b>	If “because of <i>mental deficiency</i> ..., the parent is and will continue to be incapable of giving the child proper parental care and protection for a longer period of time than would be wise or prudent to leave the child in an unstable or impermanent environment.” <sup>44</sup>
<b><u>NJ</u></b>	No explicit reference to the <i>mental retardation</i> or other disability of a parent as a ground for the involuntary termination of parental rights.
<b><u>NM</u></b>	No explicit reference to the <i>mental retardation</i> or other disability of a parent as a ground for the involuntary termination of parental rights.
<b><u>NY</u></b>	No explicit reference to the <i>mental retardation</i> or other disability of a parent as a ground for the involuntary termination of parental rights.

<b>State</b>	<b>Factor(s) Supporting Involuntary Termination of Rights</b>
<b><u>NC</u></b>	No explicit reference to the <i>mental retardation</i> or other disability of a parent as a ground for the involuntary termination of parental rights.
<b><u>ND</u></b>	If “by reason of physical or <i>mental incapacity</i> the parent is unable to provide necessary parental care for the minor.” <sup>45</sup>
<b><u>OH</u></b>	No explicit reference to the <i>mental retardation</i> or other disability of a parent as a ground for the involuntary termination of parental rights.
<b><u>OK</u></b>	If “the parent whose rights are sought to be terminated has a... <i>mental deficiency</i> ...which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities.” <sup>46</sup>
<b><u>OR</u></b>	Upon a finding of parental unfitness and provides that in making such a determination the court “shall consider... <i>mental deficiency</i> of the parent of such nature and duration as to render the parent incapable of providing proper care for the child for extended periods of time.” <sup>47</sup>
<b><u>PA</u></b>	No explicit reference to the <i>mental retardation</i> or other disability of a parent as a ground for the involuntary termination of parental rights.
<b><u>RI</u></b>	No explicit reference to the <i>mental retardation</i> or other disability of a parent as a ground for the involuntary termination of parental rights.
<b><u>SC</u></b>	If “the parent has a diagnosable condition unlikely to change within a reasonable time including, but not limited to... <i>mental deficiency</i> ...and the condition makes the parent unlikely to provide minimally acceptable care of the child.” <sup>48</sup>
<b><u>SD</u></b>	No explicit reference to the <i>mental retardation</i> or other disability of a parent as a ground for the involuntary termination of parental rights.
<b><u>TN</u></b>	If “the parent or guardian of the child is incompetent to adequately provide for the further care and supervision of the child because the parent's or guardian's mental condition is presently so impaired and is so likely to remain so that it is unlikely that the parent or guardian will be able to assume or resume the care of and responsibility for the child in the near future.” <sup>49</sup>
<b><u>TX</u></b>	”if the court finds that...the parent has a... <i>mental deficiency</i> that renders the parent unable to provide for the physical, emotional, and mental needs of the child....” <sup>50</sup>
<b><u>UT</u></b>	The “ <i>mental deficiency</i> of the parent that renders him unable to care for the immediate and continuing physical or emotional needs of the child for extended periods of time.” <sup>51</sup>
<b><u>VT</u></b>	No explicit reference to the <i>mental retardation</i> or other disability of a parent as a ground for the involuntary termination of parental rights.
<b><u>VA</u></b>	“the parent or parents are suffering from a... <i>mental deficiency</i> of such severity that there is no reasonable expectation that such parent will be able to undertake responsibility for the care needed by the child in accordance with his age and stage of development” constitutes prima facie evidence” of such a conclusion. <sup>52</sup>
<b><u>WA</u></b>	“the “ <i>psychological incapacity</i> or <i>mental deficiency</i> of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time.” <sup>53</sup> Washington law, however, generally provides that “no parent or guardian may be deemed abusive or neglectful solely by reason of the parent's or child's ... <i>developmental disability</i> ....” <sup>54</sup>
<b><u>WV</u></b>	If “parent or parents have incurred... <i>mental deficiency</i> of such duration or nature as to render such parent or parents incapable of exercising proper parenting skills or sufficiently improving the adequacy of such skills.” <sup>55</sup>
<b><u>WI</u></b>	If a parent has a “continuing parental disability,” as evidenced by confinement in an institution for persons with “ <i>developmental disabilities</i> .” <sup>56</sup>

State	Factor(s) Supporting Involuntary Termination of Rights
<u>WY</u>	No explicit reference to the <i>mental retardation</i> or other disability of a parent as a ground for the involuntary termination of parental rights.

**(5) Legal Competence or Capacity Under State Law**

Laws in all 50 states and the District of Columbia currently outline standards for the appointment of guardians and conservators on behalf of persons who are determined to be legally incompetent or to lack legal capacity (i.e., adult status). Detailed state-by-state notes on State laws defining the class or classes of adults for whom guardians and conservators may be appointed are attached as Appendix B as 4. Notes on Legal Competency and Capacity presents an over-view of the results of a study conducted by project staff of the terms currently used in state statutes relating to the appointment of guardians and conservators by state courts. The *first column* shows the state abbreviation. The *second column* shows the type of appointment that is authorized (e.g., guardian, conservator). The *third column* shows whether or not the state uses a diagnosis of *mental retardation* or of an *alternative term* as a basis for making such an appointment and, if so, indicates what *alternative term* is used.

A review of the information presented on **Table 2** shows that in arriving at state court determinations of legal competency and capacity leading to the appointment of guardians and conservators:

- ! 19 states and the District of Columbia use a diagnosis of *mental retardation*;<sup>57</sup>
- ! 20 states use a diagnosis of *mental deficiency*;
- ! 14 states use a diagnosis of *developmental disability*; and
- ! 10 states use other diagnostic categories.<sup>58</sup>

**Table 2**

**State Criteria for Determining Legal Competence and Capacity**

State	Context	Standard of Competence or Capacity
AL	Guardian	For <i>developmentally disabled</i> persons, “and defines such a person to be: <i>a person whose impairment of general intellectual functioning or adaptive behavior meets the following criteria: ... (3) It is attributed to one or more of the following: a. Mental retard-ation...; b. Any other condition of a person found to be closely related to mental retardation...</i> ” <sup>59</sup>
AK	Conservator	For a person determined by a court to be “unable to manage the person's property and affairs effectively for reasons such as ... <i>mental deficiency</i> .” <sup>60</sup>
AZ	Conservator	For an “incapacitated person,” and defines such a person to be: “any person who is impaired by reason of... <i>mental deficiency</i> ... to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.” <sup>61</sup>
AR	Guardian	For an “incapacitated person,” and defines such a person to be: “a person who is impaired by reason of a disability such as ... <i>mental deficiency</i> ...” <sup>62</sup>
CA	Guardian or conservator	For a person with a “ <i>developmental disability</i> ,” and defines that term to mean: “a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial handicap for such individual. ... this term includes <i>mental retardation</i> ...” <sup>63</sup>

<b>State</b>	<b>Context</b>	<b>Standard of Competence or Capacity</b>
<b>CO</b>	Guardian or conservator	For an "incapacitated" person, and defines that term to mean: lacking "the ability to manage property and business affairs effectively by reason of... <i>mental deficiency</i> , or other disabling cause." <sup>64</sup>
<b>CN</b>	Plenary guardian	For an individual found to be: "by reason of the severity of his <i>mental retardation</i> , totally unable to meet essential requirements for his physical health or safety and totally unable to make informed decisions about matters related to his care," and defines " <i>mental retardation</i> " to be: "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period." <sup>65</sup>
<b>DE</b>	Guardian	For a "disabled resident," including "a person who by reason of <i>mental or physical incapacity</i> is unable properly to manage or care for their own person or property, or both." <sup>66</sup> In this context, state law defines "mental or physical incapacity" to be "any physical or mental disability and shall include ... <i>mental retardation</i> ..." <sup>67</sup>
<b>DC</b>	Conservator or guardian	For an "incapacitated individual," State law expressly provides that such an incapacity may arise from <i>mental retardation</i> . <sup>68</sup>
<b>FL</b>	Guardian	For a person found to be <i>mentally incompetent</i> , and defines such a person to include: "one who, because of ... <i>mental retardation</i> ... is incapable of either managing his or her property or caring for himself or herself, or both." <sup>69</sup>
<b>GA</b>	Guardian	For "adults who are incapacitated by reason of ... <i>mental retardation</i> ..." <sup>70</sup>
<b>HA</b>	Guardians of person and property	Guardian of an incapacitated person" and defines that term to mean: "any person who is impaired by reason of... <i>mental deficiency</i> ... to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning one's person." <sup>71</sup> Guardian for the property of a person who "is unable to manage the person's property and affairs...for reasons such as .... <i>mental deficiency</i> ..." <sup>72</sup>
<b>ID</b>	Guardian and conservator	A guardian for "incapacitated persons," and defines such a person to be: "any person who is impaired, except by minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, provided, that the term shall not refer to a <i>developmentally disabled</i> person...." <sup>73</sup> A conservator for a person "unable to manage his property and affairs effectively for reasons such as... <i>mental deficiency</i> ..." <sup>74</sup>
<b>IL</b>	Guardian	For a "disabled person," and defines such a person as including: "a person with...a <i>developmental disability</i> and who because of his... <i>developmental disability</i> is not fully able to manage his person or estate." State law defines " <i>developmental disability</i> " to be "a disability which is attributable to ... <i>mental retardation</i> ...or ...any other condition which results in impairment similar to that caused by <i>mental retardation</i> and which requires services similar to those required by <i>mentally retarded</i> persons." <sup>75</sup>
<b>IN</b>	Guardian	For "incapacitated persons," and defines such persons as those who are unable to manage in whole or in part their property, to provide self-care, or both "because of... <i>mental deficiency</i> ...or other incapacity; or who have a " <i>developmental disability</i> ." <sup>76</sup>
<b>IA</b>	Guardian	For a person with <i>mental retardation</i> . <sup>77</sup>

<b>State</b>	<b>Context</b>	<b>Standard of Competence or Capacity</b>
<b>KS</b>	Guardian	For a “disabled person,” and defines such a persons as: “an adult person whose ability to receive and evaluate information effect-ively or to communicate decisions, or both, is impaired to such an extent that the person lacks the capacity to manage such person's financial resources or, except for reason of indigency, to meet essential requirements for such person's physical health or safety, or both.” <sup>78</sup>
<b>KY</b>	Guardian or conservator	For a person found to have a “partial disability or disability due to “ <i>developmental disability</i> ,” including “ <i>mental retardation</i> .” <sup>79</sup>
<b>LA</b>	Tutor	For a person above the age of fifteen who possess “less than two-thirds of the average mental ability of a normal person of the same age, evidenced by standard testing procedures administered by competent persons.” <sup>80</sup>
<b>ME</b>	Guardian and conservator	For “incapacitated persons,” and defines such a person to be: “any person who is impaired by reason of... <i>mental deficiency</i> , ...to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.” <sup>81</sup>
<b>MD</b>	Guardian and conservator	For “disabled persons,” and defines such persons without specific reference to <i>developmental disability</i> , <i>mental retardation</i> or <i>mental deficiency</i> . <sup>82</sup>
<b>MA</b>	Guardian and conservator	Guardians for “ <i>mentally retarded</i> persons” <sup>83</sup> and conservators of the property of persons [who] “by reason of... <i>mental retardation</i> ...[are] unable to properly care for their property ....”
<b>MI</b>	Guardian	For “individuals with <i>developmental disability</i> .” <sup>84</sup>
<b>MN</b>	Guardian or conservator	For a person who is “incapacitated,” and defines that term to mean: “lacking the ability to manage property and business affairs effectively by reason of... <i>mental retardation</i> , or other disabling cause.” <sup>85</sup>
<b>MS</b>	Guardian and conservator	Guardians for “persons of unsound mind.” <sup>86</sup> State law defines “unsound mind,” when used in any statute in reference to persons, to include idiots, lunatics, and persons non compos mentis.” <sup>87</sup> Conservators “if a person by reason of...mental weakness is incapable of managing his own estate.” <sup>88</sup>
<b>MO</b>	Guardian and conservator	For a “disabled person,” and defines such a person to be: “one who is ...unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the person lacks ability to manage his financial resources.” <sup>89</sup>
<b>MT</b>	Conservator	For a person who is “unable to manage his property and affairs effectively for reasons such as... <i>mental deficiency</i> ....” <sup>90</sup>
<b>NE</b>	Guardian and conservator	For “incapacitated persons,” and define such a person to be: “any person who is impaired by reason of... <i>mental deficiency</i> ,...to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning himself or herself.” <sup>91</sup> State law also defines “incapacitated” to mean “lacking the ability to manage property and business affairs effectively by reason of... <i>mental deficiency</i> ....” <sup>92</sup>
<b>NV</b>	Guardian and conservator	For “incapacitated persons” and “incompetents,” and defines an “incapacitated person” to be: “a person who is impaired by reason of... <i>mental deficiency</i> ...., to the extent of lacking sufficient under-standing or capacity to make or communicate responsible decisons.” <sup>93</sup>
<b>NH</b>	Guardian and conservator	For persons with a <i>developmental disability</i> . <sup>94</sup>

<b>State</b>	<b>Context</b>	<b>Standard of Competence or Capacity</b>
<b>NJ</b>	Guardian	For an “incapacitated person,” and defines such a person to be: “a person who is impaired by reason of... <i>mental deficiency</i> to the extent that he lacks sufficient capacity to govern himself and manage his affairs.” <sup>95</sup>
<b>NM</b>	Guardian and conservator	For an “incapacitated person,” and defines such a person" to be: “any person who demonstrates over time either partial or complete functional impairment by reason of... <i>mental deficiency</i> ...to the extent that he is unable to manage his personal care or he is unable to manage his property and financial affairs.” <sup>96</sup>
<b>NY</b>	Guardian	For an individual who is “incapacitated.” <sup>97</sup>
<b>NC</b>	Guardian	For a person who is “incompetent,” and defines that term to mean: lacking “sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to... <i>mental retardation</i> ...or similar cause or condition.” <sup>98</sup>
<b>ND</b>	Guardian and conservator	Guardian for an “incapacitated person,” and defines such a person to be: ”any adult person who is impaired by reason of... <i>mental deficiency</i> ...to the extent that the person lacks capacity to make or communicate responsible decisions ... or which incapacity endangers the person's health or safety.” <sup>99</sup> Conservator for a person that a court determines “is unable to manage the person's property and affairs effectively for reasons such as... <i>mental deficiency</i> ...” <sup>100</sup>
<b>OH</b>	Guardian and conservator	For persons who are “incompetent,” and defines that term to mean: “so mentally impaired as a result of... <i>mental retardation</i> , that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide.” <sup>101</sup>
<b>OK</b>	Guardian and conservator	For an “incapacitated person,” and defines such a person to be: “a person...who is impaired by reason of... <i>mental retardation</i> or <i>developmental disability</i> ...” <sup>102</sup>
<b>OR</b>	Conservator or guardian	For a “financially incapable person,” and defines such a person as having: “a condition in which a person is unable to manage financial resources of the person effectively for reasons including, but not limited to... <i>mental deficiency</i> .” <sup>103</sup>
<b>PA</b>	Guardian	For an “incapacitated person,” and defines such a person to be: “an adult, whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his health and safety.” <sup>104</sup>
<b>RI</b>	Guardian and conservator	For a person who is “incapacitated,” and defines that term to mean: “lacking the ability to manage property and business affairs effectively by reason of... <i>mental deficiency</i> .” <sup>105</sup> State law also permits the probate courts to appoint guardians and limited guardians based on “a functional assessment which reflects the proposed ward's current level of functioning.” The law makes no specific reference to <i>mental retardation</i> , <i>mental deficiency</i> or <i>developmental</i> or <i>other disabilities</i> .

<b>State</b>	<b>Context</b>	<b>Standard of Competence or Capacity</b>
<b>SC</b>	Guardian and conservator	Guardian for an “incapacitated person,” and defines such a person to be “any person who is impaired by reason of... <i>mental deficiency</i> ...to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concern-ing his person or property.” <sup>106</sup> Conservator for a person who is “unable to manage his property and affairs effectively for reasons such as... <i>mental deficiency</i> ...” <sup>107</sup>
<b>SD</b>	Conservator or guardian	For a person “whose ability to respond to people, events and environments is impaired to such an extent that the individual lacks the capacity to manage property or financial affairs or to provide for his support or the support of legal dependents without...assistance or protection...” <sup>108</sup>
<b>TN</b>	Conservator	For a “disabled person,” and defines such a person to be: “any person eighteen (18) years of age or older determined by the court to be in need of partial or full supervision, protection and assistance by reason of... <i>developmental disability</i> or other mental or physical incapacity.” <sup>109</sup>
<b>TX</b>	Guardian	For an “incapacitated person,” <sup>110</sup> and defines such a person to include an individual “who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs...” <sup>111</sup>
<b>UT</b>	Guardian and conservator	Guardian for an “incapacitated person,” and defines such a person to be: “any person who is impaired by reason of... <i>mental deficiency</i> ...” <sup>112</sup> Conservator for persons who are “unable to manage the person's property and affairs effectively for reasons such as... <i>mental deficiency</i> ...” <sup>113</sup>
<b>VT</b>	Guardian	For a person who is <i>mentally retarded</i> and unable to manage, without the supervision of a guardian, some or all aspects of his or her personal care or financial affairs.” <sup>114</sup> Guardian for “any person with developmental disabilities who ”is in need of supervision and protection for the person's own welfare or the public welfare,” <sup>115</sup> and defines such a person to have “a severe, chronic disability that must arise before the person reaches the age of 18, and results in:.. <i>mental retardation</i> ...and ...deficits in adaptive behavior at least two standard deviations below the mean for a normative comparative comparison group.” <sup>116</sup>
<b>VA</b>	Guardian and conservator	Guardian and conservator for an “incapacitated person,” and defines such a person to be: an adult who [is]...incapable of receiving and evaluating information effectively or responding to people, events, or environments... <sup>117</sup>
<b>WA</b>	Guardian	For an “incapacitated person,” <sup>118</sup> and defines such a person to be “an individual with a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety, and defines the term to include a person who is “incompetent by reason of... <i>developmental disability</i> ...or other mental incapacity, of either managing his or her property or caring for himself or herself, or both.” <sup>119</sup>

<b>State</b>	<b>Context</b>	<b>Standard of Competence or Capacity</b>
<b>WV</b>	Guardian and conservator	For a “protected person,” and defines such a person to be: an adult...who has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments... <sup>120</sup> The law expressly grandfathers “ <i>mentally retarded</i> persons” for whom guardians had been previously appointed. <sup>121</sup>
<b>WI</b>	Guardian and conservator	For an “incompetent” person, and defines such a person to be: “a person...substantially incapable of managing his or her property or caring for himself by reason of... <i>developmental disabilities</i> , or other like incapacities.” <sup>122</sup> In this context, state law defines a “developmentally disabled person” to be a person “having a disability attributable to <i>mental retardation</i> .” <sup>123</sup>
<b>WY</b>	Guardian or conservator	For a “mentally incompetent person,” <sup>124</sup> and defines such a person to be: “an individual who is unable unassisted to properly manage and take care of himself or his property as the result of...mental deficiency or <i>mental retardation</i> .” <sup>125</sup>

### (6) Criminal Responsibility and Competence to Stand Trial

Laws in many states and the District of Columbia currently present criteria for determining criminal responsibility and culpability, competence to stand trial and for sentencing (e.g., particularly in capital cases) that in part rely on a diagnosis of “mental retardation” or an alternative diagnosis (e.g., *mental deficiency*). Detailed state-by-state notes on State laws addressed to criminal responsibility and culpability, competence to stand trial and sentencing are attached in the Appendix B as 5. Notes on Criminal Responsibility and Competence presents an overview of the results of a study conducted by project staff of the terms currently used in state statutes relating to the grounds for such an involuntary termination by state courts. The first column shows the state abbreviation. The second column shows whether or not the state uses a diagnosis of *mental retardation* or of an *alternative term* as a factor in making such determinations and, if so, indicates what *alternative terms* are used.

A review of the information presented on **Table 3** shows that laws in 16 states directly address criminal responsibility and culpability based on a diagnosis of *mental retardation* or the use of an *alternative term*:

- ! 14 states (AL, AK, CO, GA, IN, MD, OH, OK, TN, TX, UT, VA, WV and WY) and the District of Columbia excuse criminal responsibility (either directly or through an affirmative defense) based on a diagnosis of *mental retardation*;
- ! 1 state (SD) excuses criminal responsibility based on a diagnosis of “*developmental disability*;” and
- ! 1 state (MS) excuses criminal responsibility based on a diagnosis of “feeble-minded.”

In 16 additional states, a finding of diminished responsibility may be based on a finding of “mental defect.”

A review of the information presented on **Table 3** shows that laws in 4 states directly address the competence of defendants to stand trial based on based on a diagnosis of *mental retardation* or the use of an *alternative term*:

- ! Only 3 states (CA, FL and WY) determine that persons are not competent to stand trial based on a diagnosis of “mental retardation; and
- ! 2 states (CA and SD) determine competency to stand trial based on a diagnosis of “developmental disability.”

In 11 additional states, a finding of “mental defect” is used to to determine competency to stand trial.

Finally a review of the information presented on **Table 3** (below) shows that laws in 16 states directly qualify or condition sentencing (particularly in capital cases) based on a diagnosis of *mental retardation* or the use of an alternative term:

- ! 14 states (AR, CO, FL, IL, IN, IA, KS, KY, MD, NE, NM, SC, SD and WA) and the District of Columbia qualify or condition sentencing in criminal cases based on a diagnosis of “mental retardation;
- ! 1 state (NJ) qualifies or conditions sentencing in criminal cases based on a diagnosis of “developmental disability;” and
- ! 1 state (MN) qualifies or conditions sentencing in criminal cases based on a finding of “mental deficiency.”

**Table 3**  
**State Criminal Justice Provisions**

State	Provisions
AL	Permits defense that an individual is “ <i>mentally retarded</i> .” <sup>126</sup> In capital cases, courts must determine the presence of any mental disease or defect which would affect the capacity of the defendant to stand trial or would affect the defendant's criminal responsibility at the time of the crime. <sup>127</sup>
AK	The presence of a "mental disease or defect," is a defense to criminal responsibility and defines that term to mean: “a disorder of thought or mood that substantially impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life; "mental disease or defect" also includes <i>retardation</i> .” <sup>128</sup>
AZ	A person is "incompetent to stand trial" if he or she “as a result of a mental illness, defect or disability” is unable to understand the nature and object of the proceeding or to assist in the defendant's defense.” <sup>129</sup>
AR	“No defendant with <i>mental retardation</i> at the time of committing capital murder shall be sentenced to death.” “There is a rebuttable presumption of <i>mental retardation</i> when a defendant has an intelligence quotient of sixty-five (65) or below.” <sup>130</sup>
CA	California provides that: “a person cannot be tried or adjudged to punishment while that person is <i>mentally incompetent</i> : if, as a result of mental disorder or <i>develop-mental disability</i> , the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.” <sup>131</sup>
CO	Defendants in felony cases may be declared a <i>mentally retarded</i> defendant <sup>132</sup> Colorado forbids the imposition of a sentence of death upon any defendant who is determined to be a <i>mentally retarded</i> defendant. <sup>133</sup>
CN	The “incompetency” of a criminal defendant is defined to be the inability: “to under-stand the proceedings against him or to assist in his own defense” <sup>134</sup> but no specific reference is made to persons who are “ <i>mentally retarded</i> ,” “ <b>mentally deficient</b> ,” “ <i>developmentally disabled</i> ” or who have a “mental disease or defect.”
DE	An affirmative defense in any prosecution for an offense that, at the time of the conduct charged, as a result of mental illness or mental defect, the accused lacked substantial capacity to appreciate the wrongfulness of the accused's conduct. <sup>135</sup>

State	Provisions
DC	A court may suspend sentence, or suspend the entering of an order sending a person to prison if the court finds that the person is at least <i>moderately mentally retarded</i> . If a youthful offender is brought before a court and it appears to the court that the child is at least <i>moderately mentally retarded</i> , the court may adjourn the proceedings. <sup>136</sup>
FL	A court may determine that a criminal defendant is “incompetent to proceed” to trial based upon a finding that the defendant is “ <i>retarded</i> .” <sup>137</sup> Florida law also provides that a “sentence of death may not be imposed upon a defendant convicted of a capital felony if it is determined in accordance with this section that the defendant has <i>mental retardation</i> .” <sup>138</sup>
GA	A defense of insanity is permitted where a jury or court finds that the defendant is “ <i>mentally retarded</i> ” <sup>139</sup> and allows for a plea of “guilty but <i>mentally retarded</i> .” <sup>140</sup>
HA	Prohibits the trial, conviction or sentencing for the commission of an offense of any person who lacks the capacity to understand the proceedings against him or her or to assist in his or her own defense as a result of a physical or mental disease, disorder, or defect. <sup>141</sup>
ID	“Mental condition shall not be a defense to any charge of criminal conduct,” <sup>142</sup> and a special plea of not guilty based on “mental disease or defect” is not permitted. <sup>143</sup> “No person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted, sentenced or punished for the commission of an offense so long as such incapacity endures.” <sup>144</sup>
IL	The fact that the “defendant was <i>mentally retarded</i> ” is a ground that is to be accorded weight in favor of withholding or minimizing a sentence of imprisonment. <sup>145</sup>
IN	For a defendant found not responsible by reason of insanity at the time of a crime, the court must determine whether a defendant is currently mentally ill and either dangerous or gravely disabled. <sup>146</sup> State law defines “mental illness” in this context to be: “a psychiatric disorder that...includes <i>mental retardation</i> ....” <sup>147</sup> Courts may not impose the death sentence on a defendant who is a <i>mentally retarded</i> individual. <sup>148</sup>
IA	If the evidence received at an juvenile court hearing indicates that a child is <i>mentally retarded</i> , the court may trigger the initiation of civil commitment proceedings.” <sup>149</sup> Juvenile courts may also suspend sentence or orders following a criminal conviction in the district court of a child who is dependent, neglected, or delinquent and who appears ... to be “ <i>mentally retarded</i> .” <sup>150</sup>
KS	If a court determines that a defendant convicted of the crimes of capital murder or murder in the first degree is <i>mentally retarded</i> , the court shall not impose a sentence of death. <sup>151</sup>
KY	The death penalty may not be imposed on offenders who have been determined to be “seriously <i>mentally retarded</i> .” <sup>152</sup>
LA	State law makes no specific reference to the treatment of persons who are “ <i>mentally retarded</i> ,” “ <i>mentally deficient</i> ,” “ <i>developmentally disabled</i> ” or who have a “mental disease or defect.”
ME	Defendants may be found incompetent to stand trial “by reason of mental disease or <i>mental defect</i> .” <sup>153</sup>
MD	“A defendant is not criminally responsible for criminal conduct if, at the time of that conduct, the defendant, because of... <i>mental retardation</i> , lacks substantial capacity to: (1) appreciate the criminality of that conduct; or (2) conform that conduct to the requirements of law.” <sup>154</sup> State law prohibits the imposition of a death sentence upon an individual found guilty of murder in the first degree who was, at the time the murder was committed, <i>mentally retarded</i> . <sup>155</sup> State law also prohibits capital punishment of an individual subsequently determined to be “incompetent,” and defines “incompetent” to mean: a “state of mind...[which] as a result of... <i>mental retardation</i> lacks awareness....” <sup>156</sup>
MA	Alternative procedures for taking testimony from witnesses with <i>mental retardation</i> .” <sup>157</sup>

State	Provisions
<b>MI</b>	Michigan law makes no specific reference to the treatment of persons who are “ <i>mentally retarded</i> ,” “ <i>mentally deficient</i> ,” “ <i>developmentally disabled</i> ” or who have a “mental disease or defect.” <sup>158</sup>
<b>MN</b>	“No person shall be tried, sentenced, or punished for any crime while... <i>mentally deficient</i> so as to be incapable of understanding the proceedings or making a defense; but the person shall not be excused from criminal liability except upon proof that at the time of committing the alleged criminal act the person was laboring under such a defect of reason, from one of these causes, as not to know the nature of the act, or that it was wrong.” <sup>159</sup>
<b>MS</b>	Any person charged with a crime or delinquency who was feeble-minded to such an extent as not to be responsible for his or her act or omission at the time when the act or omission charged was made, shall be remand to custody of the court. <sup>160</sup>
<b>MO</b>	“A person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental...defect such person was incapable of knowing and appreciating the nature, quality, or wrongfulness of such person's conduct,” and permits evidence that the defendant did or did not suffer from a mental defect to determine if such a person should be sentenced to death. <sup>161</sup>
<b>MT</b>	State law makes no specific reference to the treatment of persons who are “ <i>mentally retarded</i> ,” “ <i>mentally deficient</i> ,” “ <i>developmentally disabled</i> ” or who have a “mental disease or defect.” <sup>162</sup>
<b>NE</b>	The imposition of the death penalty upon “any person with <i>mental retardation</i> ,” is prohibited. <sup>163</sup>
<b>NV</b>	State law makes no specific reference to the treatment of persons who are “ <i>mentally retarded</i> ,” “ <i>mentally deficient</i> ,” “ <i>developmentally disabled</i> ” or who have a “mental disease or defect” but establishes “under the influence of extreme mental or emotional disturbance” as a mitigating circumstance with respect to the imposition of the death penalty in capital cases. <sup>164</sup>
<b>NH</b>	State law makes no specific reference to the treatment of persons who are “ <i>mentally retarded</i> ,” “ <i>mentally deficient</i> ,” “ <i>developmentally disabled</i> ” or who have a “mental disease or defect.”
<b>NJ</b>	State law makes no specific reference to the treatment of persons who are “ <i>mentally retarded</i> ,” “ <i>mentally deficient</i> ,” “ <i>developmentally disabled</i> ” or who have a “mental disease or defect,”but does prohibits the commitment of juvenile offenders to a State juvenile facility who are <i>developmentally disabled</i> . <sup>165</sup>
<b>NM</b>	State law establishes a procedure for determining that a criminal defendant is incompetent to stand trial based on a finding “that the defendant has <i>mental retardation</i> ....” <sup>166</sup> New Mexico law explicitly provides that “the penalty of death shall not be imposed on any person who is <i>mentally retarded</i> ,” and uses the same definition of the term. <sup>167</sup>
<b>NY</b>	State law provides that in any criminal prosecution, it is an affirmative defense that when the defendant engaged in the proscribed conduct, he lacked criminal responsibility by reason of mental disease or defect. <sup>168</sup> Similarly, the competency of a defendant to stand trial is determined by the court based on a finding of whether the defendant “as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense.” <sup>169</sup>
<b>NC</b>	State law provides that “no person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner.” <sup>170</sup> State law also permits a defendant in a criminal proceeding to raise the defense of insanity induced by “mental disease, defect, or other condition bearing upon the issue of whether he had the mental state required for the offense charged.” <sup>171</sup>

State	Provisions
<b>ND</b>	State law prohibits the trial, conviction or sentencing of “mentally unfit” defendants, <sup>172</sup> and generally provides that: “an individual is not criminally responsible for criminal conduct if, as a result of mental disease or defect existing at the time the conduct occurs: (a) the individual lacks substantial capacity to comprehend the harmful nature or consequences of the conduct, or the conduct is the result of a loss or serious distortion of the individual's capacity to recognize reality; and (b) it is an essential element of the crime charged that the individual act willfully.” <sup>173</sup>
<b>OH</b>	State law permits a person to be determined by a court to be incompetent to stand trial and to be found by a jury to be not guilty of a crime by reason of insanity because of <i>mental retardation</i> . <sup>174</sup>
<b>OK</b>	“All persons are capable of committing crimes, except those belonging to the following classes: “...persons who are impaired by reason of <i>mental retardation</i> upon proof that at the time of committing the act charged against them they were incapable of knowing its wrongfulness.” <sup>175</sup> State law also provides that a defendant in any criminal prosecution who at the time of the trial is “impaired by reason of <i>mental retardation</i> ” may be found by a jury to be not guilty on account of such “unsoundness of mind.” <sup>176</sup>
<b>OR</b>	State law permits a plea by a criminal defendant of “guilty except for insanity” if “as a result of <i>mental...defect</i> at the time of engaging in criminal conduct, the person lacks substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law, <sup>177</sup> and allows defendants to offer evidence of mental defect constituting insanity as an affirmative defense. <sup>178</sup> State law also permits a court at any time before or during the trial in any criminal case, to determine that a defendant is not fit to proceed by reason of incapacity “as a result of mental defect.” <sup>179</sup>
<b><u>PA</u></b>	State law provides of an affirmative defense in criminal cases of “guilty but mentally ill,” and defines “mentally ill” to be: “one, who as a result of mental disease or defect, lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law.” <sup>180</sup>
<b><u>RI</u></b>	State law makes no specific reference to the treatment of persons who are “ <i>mentally retarded</i> ,” “ <i>mentally deficient</i> ,” “ <i>developmentally disabled</i> ” or who have a “mental disease or defect,” but defines “mental incompetency” to stand trial to mean: “unable to understand the character and consequences of the proceedings against him or her or is unable properly to assist in his or her defense.” <sup>181</sup>
<b><u>SC</u></b>	State law establishes an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of... <i>mental defect</i> , lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong, <sup>182</sup> and permits a verdict of “guilty but mentally ill” in such circumstances. <sup>183</sup> State law also establishes the fact that a “defendant had mental retardation at the time of the crime,” as a mitigating circumstance to be considered by a judge during a separate sentencing proceeding to determine whether sentence should be death or life imprisonment. <sup>184</sup>
<b>SD</b>	State law provides that “a person cannot be tried, sentenced, or punished for any public offense while he is mentally incompetent to proceed,” and defines that term to mean: “the condition of a person who is suffering from a... <i>developmental disability</i> ...” <sup>185</sup> State law also provides that “the death penalty may not be imposed upon any person who was <i>mentally retarded</i> at the time of the commission of the offense and whose <i>mental retardation</i> was manifested and documented before the age of eighteen years.” <sup>186</sup>

State	Provisions
<b>TN</b>	State law permits a person with <i>mental retardation</i> charged with a felony to be acquitted of the charge on a verdict of “not guilty by reason of insanity because of <i>mental retardation</i> at the time of the commission of the crime,” <sup>187</sup> State law also prohibits the imposition of a death sentence on a defendant “with <i>mental retardation</i> at the time of committing first degree murder.” <sup>188</sup>
<b>TX</b>	State law makes no specific reference to the competency of persons who are “ <i>mentally retarded</i> ,” “ <i>mentally deficient</i> ,” “ <i>developmentally disabled</i> ” or who have a “mental disease or defect” to stand trial. <sup>189</sup> If the court determines that the defendant is incompetent, the court is authorized to conduct a further hearing “to determine whether or not the defendant...is a person with <i>mental retardation</i> and meets the criteria for commitment to a residential care facility...” <sup>190</sup> State law outlines a similar procedure to be followed by the courts if a defendant raises an insanity defense, <sup>191</sup> and also provides for a finding by a juvenile court that a “a child alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision” is “unfit to proceed” because “as a result of... <i>mental retardation</i> ,” the child “lacks capacity to understand the proceedings” or to assist in his or her own defense. <sup>192</sup>
<b>UT</b>	State law provides an affirmative defense of “mental illness” for any criminal prosecution, <sup>193</sup> and defines “mental illness” to be: “a mental disease or defect that substantially impairs a person's mental, emotional, or behavioral functioning. A mental defect may be a congenital condition, the result of injury, or a residual effect of a physical or mental disease and includes, but is not limited to, <i>mental retardation</i> .” <sup>194</sup> State law also provides that a person “suffering from... <i>mental retardation</i> is incompetent to proceed in a criminal trial” <sup>195</sup>
<b>VT</b>	State law provides that “a person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks adequate capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law... The terms “mental disease or defect” shall include congenital and traumatic mental conditions.” <sup>196</sup> State law also defines provides that a court may find a defendant “incompetent to stand trial due to a mental disease or mental defect.” <sup>197</sup>
<b>VA</b>	State law allows a jury in a criminal case to return a verdict of “acquittal by reason of insanity,” after which the court is required to have the acquittee evaluated by professionals “skilled in the diagnosis of mental illness and <i>mental retardation</i> .” <sup>198</sup>
<b>WA</b>	State law generally prohibits the trial, conviction or sentencing of an “incompetent” person so long as such incapacity continues, <sup>199</sup> and defines “incompetency” to be lacking “the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.” <sup>200</sup> In the context of special sentencing proceedings related to the imposition of the death penalty, State law provides “in no case, however, shall a person be sentenced to death if the person was mentally retarded at the time the crime was committed.” <sup>201</sup>
<b>WV</b>	State law provides that a defendant in a criminal case “may be incompetent to stand trial or is not criminally responsible by reason of... <i>mental retardation</i> ...” <sup>202</sup> State law also provides that a criminal defendant may be “found not guilty by reason of mental illness, <i>mental retardation</i> or addiction.” <sup>203</sup>
<b>WI</b>	State law provides that a person is not responsible for criminal conduct “if, at the time, as a result of <i>mental disease or defect</i> the person lacked substantial capacity to appreciate the wrongfulness of his conduct or conform his or her conduct to the requirements of law.” <sup>204</sup> State law also permits a plea of “not guilty by reason of mental disease or defect.” <sup>205</sup>

State	Provisions
<u>WY</u>	State law provides generally that “a person is not responsible for criminal conduct if at the time of the criminal conduct, as a result of <i>mental...deficiency</i> , he lacked substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.” <sup>206</sup> State law also provides that “no person shall be tried, sentenced or punished for the commission of an offense while, as a result of mental...deficiency, he lacks the capacity, to: (I) Comprehend his position; (ii) Understand the nature and object of the proceedings against him; (iii) Conduct his defense in a rational manner; and (iv) Cooperate with his counsel to the end that any available defense may be interposed.” <sup>207</sup> In both of these contexts, state law defines " <i>mental deficiency</i> " to be: “a defect attributable to <i>mental retardation</i> ....” <sup>208</sup>

## Notes:

- <sup>1</sup> 8 U.S.C. 1182(a).
- <sup>2</sup> 8 U.S.C. 1182(a)(1)(A)(iii).
- <sup>3</sup> 8 U.S.C. 1252(a) and (b).
- <sup>4</sup> 8 U.S.C. 1182(a)(1)(B) and 1182(b).
- <sup>5</sup> “The medical report shall contain: For an alien with a past history of mental illness, the medical report shall also contain available information on which the United States Public Health Service can base a finding as to whether the alien has been free of such mental illness for a period of time, sufficient in the light of such history, to demonstrate recovery.” INS Form I-601.
- <sup>6</sup> INS Form I-601.
- <sup>7</sup> Federal Register, March 19, 1999.
- <sup>8</sup> 42 U.S.C. § 1973gg-5(a)(2).
- <sup>9</sup> 42 U.S.C. § 1973gg-5(a)(4)(A). Certain other offices may, but do not have to be, designated as voter registration agencies, including public libraries, public schools, unemployment compensation offices, disability services offices other than the mandatory agencies, federal offices and non-governmental offices. 42 U.S.C. § 1973gg-5(a)(3). Disability services offices that have been designated as voter registration agencies include state and county offices of mental health and *mental retardation*, blindness and visual services offices, veterans' affairs offices, health department offices, labor department offices, aging department offices, and alcohol and substance abuse offices. Some states appear to be implementing the NVRA only for certain groups of citizens with disabilities. See, e.g., Ga. Stat. 21-2-222(a), limiting "persons with disabilities" for purposes of designating voter registration offices under the NVRA to individuals with physical disabilities.
- <sup>10</sup> 42 U.S.C. § 1973aa-6.
- <sup>11</sup> 42 U.S.C. § 1973ee-1(a).
- <sup>12</sup> [Http://www.uscg.mil/d13/units/mspuget/searec3.html](http://www.uscg.mil/d13/units/mspuget/searec3.html).
- <sup>13</sup> 29 CFR 1630.2(h)(2).
- <sup>14</sup> 28 CFR 35.104 and 28 CFR 36.104.

- 15 29 U.S.C 706 and 793, as amended by sec. 111, Pub. L. 93-516; sec. 103(d)(2)(B), Pub. L. 99-506; sec. 9, Pub. L. 100-259; sec. 512, Pub. L. 101-336 ; and secs. 102 and 505, Pub. L. 102-569.
- 16 29 U.S.C. 794.
- 17 40 CFR 84.3(j)(2).
- 18 Fair Housing--it's Your Right. U.S. Department of Housing and Urban Development, [www.hud.gov/HUDFairhousing.htm](http://www.hud.gov/HUDFairhousing.htm).
- 19 Section 26-18-7 of the Code of Alabama, last amended in 1984.
- 20 Section 47.10.086(c)(5) of the Alaska State Statutes.
- 21 Section 8-863 of the Arizona Revised Statutes.
- 22 Section 9-27-341(b)(3)(B)(vii)(a) of the Arkansas Code.
- 23 Section 300 of the California Welfare and Institutions Code.
- 24 Section 19-5-105 of the Colorado Revised Statutes.
- 25 Section 1103(a) of the Delaware Code.
- 26 Section 1101(9) of the Delaware Code.
- 27 Section 63.089(3)(e) of the 2001 Florida Statutes.
- 28 Section 15-11-94 of the Georgia Code.
- 29 Section 571-61(b)(F) of the 2000 Hawaii Revised Statutes.
- 30 Section 6-2005(d) of the Idaho Code.
- 31 Section 1D of Act 50 of Chapter 750 of the Illinois Compiled Statutes. Illinois law defines an "unfit person" in the context of the involuntary termination of parental rights, and establishes grounds of "unfitness."
- 32 Section 1-116 of Act 5 of Chapter 405 of the Illinois Compiled Statutes.
- 33 Section 1-106 of Act 5 of Chapter 405 of the Illinois Compiled Statutes.
- 34 Section 232.2(6)(n) of the Iowa Code 2001.
- 35 Section 1583a(b)(1) of Chapter 38 of the Kansas Statutes.
- 36 Section 127(6) of Chapter 610, Section 23(a) of Chapter 620, and Section 90(a) of Chapter 625 of the Kentucky Revised Statutes.
- 37 Section 10(9) of Chapter 202B of the Kentucky Revised Code.
- 38 Article 1036(1) of the Louisiana Children's Code.
- 39 Article 1003(8) of the Louisiana Children's Code.
- 40 Section 103(e)(i) of Title 93, Chapter 15 of the Mississippi Laws.
- 41 Section 447(3) of Title XII, Chapter 211 of the Missouri Revised Statutes.
- 42 Section 292(5) of Chapter 43 of the Nebraska Revised Statutes. Similarly, Nebraska law provides that a court may terminate the rights of one or both parents under a child custody decree and parenting plan if "one parent is or both parents are unable to discharge parental responsibilities because of...*mental deficiency*..."
- 43 Section 106(1) of Chapter 128 of the Nevada Revised Statutes.
- 44 Section 5(IV) of Title XVII of Chapter 170-C of the New Hampshire Revised Statutes Annotated.
- 45 Section 14-15-19(3) of the North Dakota Century Code.
- 46 Section 10-7006-1.1(A)(13)(c) of the Oklahoma Statutes. Section 10-7505-4.2(L)(1) of the Oklahoma Statutes provides that consent to adoption is not required from "a parent who has a...*mental deficiency*... which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities.
- 47 Section 504(1) of Chapter 419b of the Oregon Revised Statutes.

48 Section 1572(6) of Title 20, Chapter 7 of the South Carolina Code of Laws.  
 49 Section 113(g)(8)(B)(i) of Title 36, Chapter 1 of the Tennessee Code.  
 50 Section 3(a) of Chapter 161 of the Texas Family Code.  
 51 Section 408(2) of Chapter 3a of the Utah Judicial Code.  
 52 Section 283 of Title 16.1, Chapter 11 of the Code of Virginia. Virginia authorizes the involuntary  
 termination of parental rights based on a finding that it is not reasonably likely that the conditions  
 which resulted in the neglect or abuse of a child can be substantially corrected or eliminated so as to  
 allow the child's safe return to his parent or parents within a reasonable period of time.”  
 53 Section 180(e) of Title 13, Chapter 13-34 of the Revised Code of Washington.  
 54 Section 15(3) of Title 26, Chapter 26-44 of the Revised Code of Washington.  
 55 Section 5(7)(b)(6) of Chapter 49, Article 6 of the West Virginia Code.  
 56 Section 48.415(1)(c) of the Wisconsin Statutes Annotated.  
 57 Until very recently, Pennsylvania also used a diagnosis of mental retardation.  
 58 Other diagnostic categories include “mental ability” (LA) and “unsound mind or mental weakness”  
 (MS).  
 59 Section 12-13-21 of the Code of Alabama. Alabama law also provides for the appointment of  
 corporations as guardians for *developmentally disabled* persons, and in this context defines such a  
 person to be: “a person whose impairment of general intellectual functioning or adaptive behavior  
 which is manifested before the person attains the age of 22 and results in *mental retardation*... as  
 defined in the DD Act. Section 26-2A-104.1(a) and Section 102(7)) of the Code of Alabama.  
 60 Section 13.26.165(2)(A) of the Alaska State Statutes. Similarly, with respect to powers of attorney,  
 Alaska law provides that disability be established by affidavit stating that the individual’s ability to  
 receive and evaluate information, or to communicate decisions, is impaired as a result of *mental*  
*deficiency*.” Section 13.26.353 (a)(1) of the Alaska State Statutes.  
 61 Section 14-5101(1) of the Arizona Revised Statutes.  
 62 Section 28-65-101(1) of the Arkansas Code, last amended in 1985.  
 63 Section 1420 of the California Probate Code.  
 64 Section 15-1.5-101 of the Colorado Revised Statutes.  
 65 Section 1-1g of the Connecticut General Statutes. “General intellectual functioning” means the results  
 obtained by assessment with one or more of the individually administered general intelligence tests  
 developed for that purpose and standardized on a significantly adequate population and admin-istered  
 by a person or persons formally trained in test administration;“ Significantly subaverage” means an  
 intelligence quotient more than two standard deviations below the mean for the test; “Adaptive  
 behavior” means the effectiveness or degree with which an individual meets the standards of personal  
 independence and social responsibility expected for the individual's age and cultural group; and  
 “Developmental period” means the period of time between birth and the eighteenth birthday.  
 66 Section 3901 of the Delaware Code.  
 67 Section 3902(2) of the Delaware Code. Delaware law also confers a right on “*mentally retarded*  
 persons” to have a qualified guardian when that is required to protect personal well-being and interests.  
 Section 5505 of the Delaware Code.  
 68 Sections 21-2054(c), 21-2066, Section 21-2041 and Section 21-2011(11) of the District of Columbia  
 Code.  
 69 Section 86.041 of the 2001 Florida Statutes.  
 70 Section 29-5-1(a)(1) of the Georgia Code.  
 71 Section 560:5-101 of the 2000 Hawaii Revised Statutes.  
 72 Section 560:5-401 of the 2000 Hawaii Revised Statutes.  
 73 Section 15-5-101(a) of the Idaho Code.  
 74 Section 15-5-401(b) of the Idaho Code.  
 75 Section 11a-1 and -2 of Act 5, Chapter 755 of the Illinois Compiled Statutes.

- 76 Section 1 of Title 29, Article 3, Chapter 6 of the Indiana Code and Section 1 of Title 12, Article 10,  
Chapter 7 of the Indiana Code.
- 77 Section 222.34 of the Iowa Code 2001.
- 78 Section 3002(a) of Chapter 59 of the Kansas Statutes. State law makes no specific reference to “*mental  
retardation*.”
- 79 Sections 540 and 510(7) of Chapter 387 of the Kentucky Revised Statutes.
- 80 Article 355 of the Louisiana Code of Civil Procedure.
- 81 Sections 5-101(1) and 5401(2) of Title 18A of the Maine Revised Statutes.
- 82 Section 101(e) of Title 13 of the Maryland Statutes 2000.
- 83 Section 1 of Chapter 201 of the General Laws of Massachusetts. State law defines a “*mentally retarded  
person*” to be: “a person who, as a result of inadequately developed or impaired intelligence, is  
substantially limited in his ability to learn or adapt, as determined in accordance with established  
standards for the evaluation of a person's ability to function in society.
- 84 Section 1602(1) of Chapter 330 of the Michigan Compiled Laws. “In the context of a persons older  
than 5 years to be: a severe, chronic condition that meets all of the following requirements: (I) Is  
attributable to a mental or physical impairment or a combination of mental and physical impairments.  
(ii) Is manifested before the individual is 22 years old. (iii) Is likely to continue indefinitely. (iv) Results  
in substantial functional limit-ations in 3 or more of the following areas of major life activity: (A) Self-  
care. (B) Receptive and expressive language. (C) Learning. (D) Mobility. (E) Self- direction. (F)  
Capacity for independent living. (G) Economic self- sufficiency. (v) Reflects the individual's need for a  
combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that  
are of lifelong or extended duration and are individually planned and coordinated.” Section 100b(20) of  
Chapter 330 of the Michigan Compiled Laws.
- 85 Section 1(9) of Chapter 529 of the Minnesota Statutes 2000.
- 86 Section 127 of Title 93, Chapter 13 of the Mississippi Laws.
- 87 Section 57 of Title 1, Chapter 3 of the Mississippi Laws.
- 88 Section 251 of Title 94, Chapter 13 of the Mississippi Laws.
- 89 Section 10(4) of Title XII, Chapter 475 of the Missouri Revised Statutes. No specific reference is made  
to *mental retardation*, *developmental disability* or *mental deficiency*.
- 90 Section 409(2)(a) of Title 72, Chapter 5 of the Montana Code Annotated 2001.
- 91 Sections 2601(1) and 2630 of Chapter 30 of the Nebraska Revised Statutes.
- 92 Section 3502 (8) of Chapter 30 of the Nebraska Revised Statutes.
- 93 Section 175 of Chapter 132 and Section 19 of Chapter 159 of the Nevada Revised Statutes.
- 94 Section 2(V) of Title XLIV, Chapter 464-a of the New Hampshire Revised Statutes Annotated.
- 95 Section 2 of Title 3B, Article 1 of the New Jersey Permanent Statutes.
- 96 Section 14 of Title 38, Article 4; Section 101(f) of Title 45, Article 5; and Section 16M of Title 27,  
Article 7 of the New Mexico Statutes Annotated.
- 97 Section 2(a) of Article 81 of the New York State Consolidated Laws. That term is defined to mean an  
individual who “is likely to suffer harm because he or she is unable to provide for personal needs and/or  
property management, and cannot adequately understand and appreciate the nature and consequences of  
such inability. Section 2(b) of Article 81 of the New York State Consolidated Laws.
- 98 Section 1101(7) and (8) of Chapter 35A of the North Carolina General Statutes. State law also defines  
individuals who are "incapacitated" as: “lacking the ability to manage property and business affairs  
effectively by reason of...*mental deficiency*... or other disabling cause. Section 1(8) of Chapter 33B of  
the North Carolina General Statutes.
- 99 Section 30.1-26-01(2) of the North Dakota Century Code.
- 100 Section 30.1-29-01(2) of the North Dakota Century Code.
- 101 Section 2111.01(D) of the Ohio Revised Code.
- 102 Section 30-1-111(A)(12)(a)(2) of the Oklahoma Statutes.

- 103 Section 5(3) of Chapter 125 of the Oregon Revised Statutes. Prior to 1992, that definition expressly included the term "*mental retardation*."
- 104 Section 5501 of Title 20 of the Pennsylvania Consolidated Statutes Annotated.
- 105 Section 1 of Title 18, Chapter 13 of the General Laws of Rhode Island.
- 106 Section 201(16) and (18) of Title 62, Chapter 1 and Section 101(1) of Title 62, Chapter 5 of the South Carolina Code of Laws.
- 107 Section 201(6) and (9) of Title 62, Chapter 1 and Section 401(2) of Title 62, Chapter 5 of the South Carolina Code of Laws.
- 108 Section 303 of Chapter 29A-5 of the South Dakota Codified Laws. The law makes no specific reference to *mental retardation*, *mental deficiency* or *developmental disability*.
- 109 Sections 101(4) and 101(7) of Title 34, Chapter 11 of the Tennessee Code.
- 110 Section 602 of Chapter XIII of the Texas Probate Code.
- 111 Section 3(p) of Chapter I and Section 601(13) of Chapter XIII of the Texas Probate Code.
- 112 Section 201(22) of Chapter 1 of the Utah Uniform Probate Code.
- 113 Section 401(2)(a) of Chapter 5 of the Utah Uniform Probate Code.
- 114 Sections 3063 and 3061 of Title 14, Chapter 111 of the Vermont Statutes. In this context, state law defines "*mentally retarded*" to mean: "significantly subaverage intellectual functioning which exists concurrently with deficits in adaptive behavior.
- 115 Section 9304 of Title 18, Chapter 215 of the Vermont Statutes.
- 116 Section 9302(1) of Title 18, Chapter 215 of the Vermont Statutes.
- 117 Section 134.6 of Title 37, Chapter 4 of the Code of Virginia.
- 118 Section 10(1) of Title 11, Chapter 11-88 of the Revised Code of Washington.
- 119 Section 10(1)(e) of Title 11, Chapter 11-88 of the Revised Code of Washington.
- 120 Section 4(13) of Chapter 44A, Article 1 of the West Virginia Code.
- 121 Section 2(a) of Chapter 44A, Article 1 of the West Virginia Code.
- 122 Section 880.01(4) of the Wisconsin Statutes Annotated.
- 123 Section 880.01(2) of the Wisconsin Statutes Annotated.
- 124 Chapter 3 of Title 3 of the 2001 Wyoming Statutes.
- 125 Section 101(a)(xii) of Title 3, Chapter 1 of the 2001 Wyoming Statutes.
- 126 Section 15-24-2(3) of the Code of Alabama, last amended in 1985. State law defines that term to mean "significant sub-average general intellectual functioning resulting in or associated with concurrent impairments in adaptive behavior and manifested during the developmental period, as measured by appropriate standardized testing instruments.
- 127 Section 15-16-22 of the Code of Alabama, last amended in 1985.
- 128 Section 12.47.130(5) of the Alaska State Statutes. State law defines that term to mean a significantly below average general intellectual functioning that impairs a person's ability to adapt to or cope with the ordinary demands of life.
- 129 Section 13-4501(2) of the Arizona Revised Statutes.
- 130 Section 5-4-618(b) of the Arkansas Code. State law defines "*mental retardation*" to be: "Significantly sub-average general intellectual functioning accompanied by significant deficits or impairments in adaptive functioning manifest in the developmental period, but no later than age eighteen (18); and... Deficits in adaptive behavior. Section 5-4-618(a)(1) of the Arkansas Code. The statute also places the burden of proving mental retardation at the time of committing the offense by a preponderance of the evidence on the defendant. This law was last amended in 1993.
- 131 Section 1367(a) of the California Penal Code. State law defines "*developmental disability*" to be a disability that originates before an individual attains age 18, continues, or can be expected to continue, indefinitely and constitutes a substantial handicap for the individual and expressly includes both "*mental retardation*" and "handicapping conditions found to be closely related to *mental retardation* or to require treatment similar to that required for *mentally retarded* individuals.
- 132 Section 16-11-311 of the Colorado Revised Statutes.

- 133 Sections 6-9-403 and 16-11-103 of the Colorado Revised Statutes, last amended in 1993. Colorado also has similar provisions related to *developmentally disabled* offenders in its youthful offender system.
- 134 Section 54-56d of the Connecticut General Statutes.
- 135 Section 401(a) of the Delaware Code. If the defendant prevails in establishing such an affirmative defense, the trier of fact shall return a verdict of "not guilty by reason of insanity." "Mental defect" is defined to be "any condition of the brain or nervous system recognized as defective, as compared with an average or normal condition, by a substantial part of the medical profession. Section 222(16) of the Delaware Code.
- 136 Section 6-1902(2) of the District of Columbia Code. State law defines such a person to be: "a person who is...impaired in adaptive behavior to a moderate, severe or profound degree and functioning at the moderate, severe or profound intellectual level in accordance with standard measurements...Section 21-1114 of the District of Columbia Code.
- 137 Section 916.302(1)(a) of the 2001 Florida Statutes. The term is defined to mean: "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. Section 916.106(12) of the 2001 Florida Statutes. The section defines "significantly subaverage general intellectual functioning" to mean "performance which is two or more standard deviations from the mean score on a standardized intelligence test, and "adaptive behavior" to mean "the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of the individual's age, cultural group, and community.
- 138 Section 921.137 of the 2001 Florida Statutes. State law defines that term to mean: "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18.
- 139 Section 7-7-131 of the Georgia Code.
- 140 Section 17-2-4 of the Georgia Code. In this context, state law defines "*mentally retarded*" to be: "having significantly subaverage general intellectual functioning resulting in or associated with impairments in adaptive behavior which manifested during the developmental period. Section 7-7-131 of the Georgia Code.
- 141 Section 704-403 of the 2000 Hawaii Revised Statutes.
- 142 Section 18-207(1) of the Idaho Code.
- 143 Section 19-1715 of the Idaho Code.
- 144 Section 18-210 of the Idaho Code.
- 145 Section 5-5-3.1 of Act 5, Chapter 730 of the Illinois Compiled Statutes. The term "*mentally retarded*" in this context is defined to be: "subaverage general intellectual functioning generally originating during the developmental period and associated with impairment in adaptive behavior reflected in delayed maturation or reduced learning ability or inadequate social adjustment. Section 5-1-13 of Act 5, Chapter 730 of the Illinois Compiled Statutes.
- 146 Section 5 of Title 35, Article 36, Chapter 2 of the Indiana Code.
- 147 Section 130 of Title 12, Article 7, Chapter 2 of the Indiana Code.
- 148 Section 5(e) of Title 35, Article 36, Chapter 2 of the Indiana Code. The term "*mentally retarded individual*" in this context means: "an individual who, before becoming twenty-two (22) years of age, manifests: (1) significantly subaverage intellectual functioning; and (2) substantial impairment of adaptive behavior; that is documented in a court ordered evaluative report. Section 2 of Title 35, Article 36, Chapter 9 of the Indiana Code.
- 149 Section 232.51 of the Iowa Code 2001.
- 150 Section 222.53 of the Iowa Code 2001. If the child is committed as a child with mental illness or *mental retardation*, any order adjudicating the child to have committed a delinquent act shall be set aside and the petition shall be dismissed.

- 151 Section 4634 of Chapter 21 of the Kansas Statutes. In this context, state law defines "*mentally retarded*" to be : "having significantly subaverage general intellectual functioning ... to an extent which substantially impairs one's capacity to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law. Section 4634(f) of Chapter 21 of the Kansas Statutes.
- 152 Section 140 of Chapter 532 of the Kentucky Revised Statutes. State law defines that term to mean: "a defendant with significant subaverage intellectual functioning existing concurrently with substantial deficits in adaptive behavior and manifested during the developmental period .... "Significantly subaverage general intellectual functioning" is defined as an intelligence quotient (I.Q.) of seventy (70) or below. Section 130(2) of Chapter 532 of the Kentucky Revised Statutes.
- 153 Section 101-B of Title 15 of the Maine Revised Statutes.
- 154 Section 109(a) of Title 3 of the Maryland Statutes 2000.
- 155 Section 412(g)(1) of Title 3 of the Maryland Statutes 2000. State law defines "*mentally retarded*" to be: "significantly subaverage intellectual functioning as evidenced by an intelligence quotient of 70 or below on an individually administered intelligence quotient test and impairment in adaptive behavior, and the *mental retardation* is manifested before the individual attains the age of 22. Section 412(g)(1)(f)(3) of Title 3 of the Maryland Statutes 2000.
- 156 Section 904(a)(2) of Title 3 of the Maryland Statutes 2000.
- 157 Section 23E of Chapter 233 of the General Laws of Massachusetts. That term is defined to mean: "substantial limitations in present functioning manifesting before age eighteen and characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work.
- 158 Section 2020 of Chapter 330 of the Michigan Compiled Laws. State law provides that a defendant to a criminal charge be presumed competent to stand trial and may be determined incompetent only if "he is incapable because of his *mental condition* of understanding the nature and object of the proceedings against him or of assisting in his defense in a rational manner.
- 159 Section: 26 of Chapter 611 of the Minnesota Statutes 2000.
- 160 Section 3 of Title 99, Chapter 13 of the Mississippi Laws.
- 161 Sections 30(1) and 15 of Title XII, Chapter 552 of the Missouri Revised Statutes.
- 162 Section 304(d)(a) of Title 46, Chapter 18 of the Montana Code Annotated 2001. State law includes as a mitigating circumstance related to whether or not a death penalty should be imposed whether "the capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law was substantially impaired."
- 163 Section 105.01(2) of Chapter 28 of the Nebraska Revised Statutes. State law defines that term to mean: "significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior. An intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of *mental retardation*."
- 164 Section 35 of Chapter 200 of the Nevada Revised Statutes.
- 165 Section 44(c)(2) of Title 2A, Article 4A of the New Jersey Permanent Statutes.
- 166 Section 1 of Title 31, Article 9 of the New Mexico Statutes Annotated. State law defines "*mental retardation*" in this context to be: "significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior. An intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of *mental retardation*."
- Section 1.6E of Title 31, Article 9 of the New Mexico Statutes Annotated.
- 167 Section 2.1 of Title 31, Article 20A of the New Mexico Statutes Annotated. State law also establishes special alternative procedures for determining competency to testify or for taking the testimony of the witness with *mental retardation*, and defines that term to mean: "substantial limitations in present functioning characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable skill areas: communication, self-

care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work.” Section 8 of Title 38, Article 6 of the New Mexico Statutes Annotated.

168 Section 14 of Article 40 of the New York State Consolidated Laws.

169 Section 10 of Article 730 of the New York State Consolidated Laws.

170 Section 1001(a) of Chapter 15A of the North Carolina General Statutes.

171 Section 959 of Chapter 15A of the North Carolina General Statutes.

172 Section 12.1-04-04 of the North Dakota Century Code.

173 Section 12.1-04.1-01 of the North Dakota Century Code.

174 Sections 2945.37 and 2945.40(A) of the Ohio Revised Code.

175 Section 21-152(3) of the Oklahoma Statutes.

176 Sections 22-925 and 22-1175.5(3) of the Oklahoma Statutes.

177 Section 295(1) of Chapter 161 of the Oregon Revised Statutes.

178 Sections 300 and 305 of Chapter 161 of the Oregon Revised Statutes.

179 Section 360 of Chapter 161 of the Oregon Revised Statutes.

180 Section 314(c)(1) of Title 18 of the Pennsylvania Consolidated Statutes Annotated.

181 Section 3.3(a)(5) of Title 40.1, Chapter 5 of the General Laws of Rhode Island.

182 Section 10A of Title 17, Chapter 24 of the South Carolina Code of Laws.

183 Section 20 of Title 17, Chapter 24 of the South Carolina Code of Laws.

184 Section 20(C)(b)(10) of Title 16, Chapter 3 of the South Carolina Code of Laws. State law defines “*mental retardation*,” to be: “significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

185 Sections 1 and 2 of Chapter 10A-2 of the South Dakota Codified Laws.

186 Sections 26.1 and 26.2 of Chapter 23A-27A of the South Dakota Codified Laws. State law defines mental retardation” to be “significant subaverage general intellectual functioning existing concurrently with substantial related deficits in applicable adaptive skill areas.

187 <sup>1</sup>Section 502 of Title 33, Chapter 5 of the Tennessee Code.

188 <sup>1</sup>Section 203(b) of Title 39, Chapter 13 of the Tennessee Code.

189 <sup>1</sup>Section 1A(a) of Article 46.02 of the Texas Code of Criminal Procedure. “A person is incompetent to stand trial if the person does not have: (1) sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding; or (2) a rational as well as factual understanding of the proceedings against the person.”

190 Section 4(a)(2) of Article 46.02 of the Texas Code of Criminal Procedure.

191 Article 46.03 of the Texas Code of Criminal Procedure.

192 Section 3(a) of Chapter 55 of the Texas Family Code.

193 Section 305(1) of Chapter 2 of the Utah Criminal Code.

194 Section 305(4) of Chapter 2 of the Utah Criminal Code. “*Mental retardation*” is, defined by state law to be: “a significant subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested during the developmental period as defined by the current Diagnostic and Statistical Manual of the American Psychiatric Association.”

195 Section 2 of Chapter 15 of the Utah Code of Criminal Procedure. Section 101(6) of Chapter 5 of the Utah Human Services Code defines “mentally retarded,” in this context, to be: “a significant, subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested during the developmental period as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.”

196 Section 4801(a) of Title 13, Chapter 157 of the Vermont Statutes.

197 Section 4817(2) of Title 13, Chapter 157 of the Vermont Statutes.

198 Section 182.2 of Title 19.2, Chapter 11.1 of the Code of Virginia.

199 Section 50 of Title 10, Chapter 10-77 of the Revised Code of Washington.

200 Section 10(14) of Title 10, Chapter 10-77 of the Revised Code of Washington.

- <sup>201</sup> Section 70 of Title 10, Chapter 10-95 of the Revised Code of Washington. State law defines “*mentally retarded*” to be: “Significantly subaverage general intellectual functioning; (ii) existing concurrently with deficits in adaptive behavior; and (iii) both significantly subaverage general intellectual functioning and deficits in adaptive behavior were manifested during the developmental period. The statute also defines: (1) "general intellectual functioning" to mean the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning; (2) "significantly subaverage general intellectual functioning" to mean intelligence quotient seventy or below; (3) "adaptive behavior" to mean the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for his or her age; and (4) "developmental period" to mean the period of time between conception and the eighteenth birthday.
- <sup>202</sup> Section 1(a) of Chapter 27, Article 6A of the West Virginia Code.
- <sup>203</sup> Section 3 of Chapter 27, Article 6A of the West Virginia Code.
- <sup>204</sup> Section 971.15 of the Wisconsin Statutes Annotated.
- <sup>205</sup> Section 971.165 of the Wisconsin Statutes Annotated.
- <sup>206</sup> Section 304(a) of Title 7, Chapter 11 of the 2001 Wyoming Statutes.
- <sup>207</sup> Section 302(a) of Title 7, Chapter 11 of the 2001 Wyoming Statutes.
- <sup>208</sup> Section 301(a)(iii) of Title 7, Chapter 11 of the 2001 Wyoming Statutes.

Appendix B:

Notes on Selected Topics

1. Special Education Laws and Regulations
2. General Assistance Laws and Regulations
3. Involuntary Termination of Parental Rights
4. Legal Competence and Capacity
5. Criminal Responsibility and Competence

## 1 Notes on Special Education Laws and Regulations

**Alabama:** Alabama law requires that local school districts provide special educational services to “exceptional children with disabilities,”<sup>1</sup> and defines such children to include: “persons between the ages of six and 21 years ...who are unable to be educated or trained adequately in the regular programs including, but not limited to: the mildly and moderately to severely *retarded*, and also the profoundly retarded ....”<sup>2</sup> State law defines “*retarded*” to be: “having subaverage general intellectual functioning which: (a) either originates during the developmental period or results from brain damage caused by disease or physical injury occurring subsequent to the developmental period; and (b) is associated with impairment in adaptive behavior.”<sup>3</sup>

**Alaska:** Alaska law requires that each “borough or city school district... provide special education and related services for exceptional children residing in the district,”<sup>4</sup> and defines “exceptional children” to be “children with disabilities and gifted children, who differ markedly from their peers to the degree that special facilities, equipment, or methods are required to make their educational program effective.”<sup>5</sup> Alaska law and regulations define “children with disabilities” to include both children with “*mental retardation*” and preschool children with “*developmental delay*.”<sup>6</sup>

**Arizona:** Arizona law requires each school district to provide special education to all “children with disabilities” within the district commensurate with their abilities and needs,<sup>7</sup> and defines such a child as: “a child who is at least three years but less than twenty-two years of age, who has been evaluated ...and found to have at least one of the following disabilities and who, because of the disability, needs special education and related services: ...mild, moderate or severe *mental retardation*<sup>8</sup> [or]... preschool moderate *delay*,<sup>9</sup> preschool severe *delay* ....”<sup>10</sup>

**Arkansas:** Arkansas law requires local school districts to provide (or cause to be provided) regular and special education, corrective, and supporting services required by “children with disabilities” to the end that they shall receive the benefits of a free and appropriate public education,<sup>11</sup> and defines such a child to be “a person between the ages of three (3) and twenty-one (21) years who, because of mental, physical, emotional, or learning disabilities, requires special education services ...including a child with *mental retardation* ...who, by reason thereof, needs special education and related services.”<sup>12</sup>

**California:** California law provides that local school systems ensure that “every individual with exceptional needs who is eligible for special education, related services, or both receive such instruction and/or services,”<sup>13</sup> and defines “individuals with exceptional needs” to be “persons who, among other things, are “identified by an individualized education program team as a child with a disability.”<sup>14</sup> “Exceptional children” are defined to expressly include “*mentally retarded pupils*.”<sup>15</sup>

**Colorado:** Colorado law requires local school districts to make available special educational services for the education of any “child with a disability” between the ages of three and twenty-one within its jurisdiction,<sup>16</sup> and defines such children as those “who by reason of one or more of the following conditions are unable to receive reasonable benefit from ordinary education: ...significant limited intellectual capacity.”<sup>17</sup> State law defines “significant limited intellectual capacity” to be: “reduced general intellectual functioning” which prevents a child from receiving reasonable educational benefit from regular education. “Reduced general intellectual functioning” is, in turn, defined to be “limited intellectual capacity or ability which usually originates in the developmental period and exists concurrently with impairment in adaptive behavior.”<sup>18</sup>

**Connecticut:** Connecticut law requires local school districts to provide special education to “every child requiring special education,”<sup>19</sup> and defines such a child to include “any exceptional child<sup>20</sup> who has *mental retardation* or who has a *developmental delay*.”<sup>21</sup> State law defines a “child with *mental retardation*” to be: “one who has *mental retardation*, as defined in the Individuals With Disabilities Act ....”<sup>22</sup> State guidelines addressed to the definition of “*mental retardation*” promote “intellectual disability” as a substitute term,<sup>23</sup> and define it to be: “significant deficits in conceptual, practical and social intelligence that adversely affect a student’s educational performance and are manifested during the developmental period (birth to age 18).”<sup>24</sup>

**Delaware:** Delaware law requires each school district to provide special education and related services to meet the needs of all “children with disabilities” identified, located and evaluated by the school district.”<sup>25</sup> State regulations define “children with disabilities” to include children identified as having a *developmental delay*,<sup>26</sup> an educable mental disability, a trainable mental disability and a severe mental disability.<sup>27</sup> These regulations direct the IEP to consider both the level of intellectual functioning and effectiveness of adaptive behavior in determining whether a child has a mental disability and the degree of mental disability.<sup>28</sup>

**District of Columbia:** District of Columbia law requires the public schools to make available special education and related services to every student with a “disability” and who requires special education services, and defines that term by referencing and incorporating the IDEA and Section 504 definitions”<sup>29</sup> which expressly include *mental retardation* within the definition of “disability.”

**Florida:** Florida law requires that local school boards provide an appropriate program of special instruction, facilities, and services for “exceptional students,”<sup>30</sup> and defines such students to include: “any child or youth who has been determined eligible for a special program including students with disabilities who are mentally handicapped ...and children who are *developmentally delayed*, ages birth through 5 years.”<sup>31</sup> Florida regulations define “mentally handicapped” to mean “significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period,”<sup>32</sup> and sub-classifies such students as “educable mentally handicapped,”<sup>33</sup> “trainable mentally handicapped,”<sup>34</sup> or “profoundly mentally handicapped.”<sup>35</sup>

**Georgia:** Georgia law requires local public schools to make available special education and related services to every “student with a disability” and who requires special education services.”<sup>36</sup> Georgia regulations provide that “a student or youth from three through 21 years of age is considered to have a disability ...if the student or youth meets the eligibility criteria in any of the following areas: ...*intellectual disability* (mild, moderate, severe, profound).”<sup>37</sup> Within these rules, “*intellectual disability*” is defined as: “significantly subaverage general intellectual functioning which exists concurrently with deficits in adaptive behavior that adversely affect educational performance and is manifested during the developmental period.”<sup>38</sup> Georgia provides separate standards for further classifying all students with *intellectual disabilities* within one of four levels: “(1) mild *intellectual disability*; (2) moderate *intellectual disability*, (3) severe *intellectual disability*; or (4) profound *intellectual disability*.”<sup>39</sup>

**Hawaii:** Hawaii law requires the state to provide all “exceptional children” residing within it “with instruction, special facilities, and special services for education, therapy, and training to enable them to live normal competitive lives,”<sup>40</sup> and defines such children to be: “persons under twenty years of age who deviate from the so-called normal person in physical, mental, social, or emotional characteristics or abilities to such an extent that specialized training, techniques, and equipment are required to enable these persons to attain the maximum of their abilities or capacities ....”<sup>41</sup> State regulations establish both “*mental retardation*” and “*developmental delay*” as eligibility categories,<sup>42</sup> and define the term “mental retardation” as: “(1) The student has subaverage general intellectual functioning, as demonstrated by evidence of intellectual functioning two or more standard deviations below the mean; (2) The subaverage intellectual functioning exists concurrently with deficits in at least two adaptive skill areas; and (3) The subaverage intellectual functioning and deficits in adaptive skill areas were manifested during the developmental period and adversely affect the student's educational performance.”<sup>43</sup> State regulations identify “*developmental delay*” as an eligibility category for children aged three through eight, and establish different criteria for children aged three through five and six through eight.

**Idaho:** Idaho law requires that each public school district provide for the special education and related services of “children with disabilities” enrolled within them,<sup>44</sup> and defines such children to include those “with *mental retardation* [or] ... *developmental delay*... and who by reason of the qualifying disability requires special education and related services.”<sup>45</sup> State 46 regulations define “mental retardation” by cross-referencing the IDEA 97 regulations.<sup>46</sup>

**Illinois:** Illinois law requires each local school district to ensure that a free appropriate public education is available to each “child with a disability” between the ages of 3 and 21 who is enrolled in the district,<sup>47</sup> and defines such children to be: “children for whom it is determined ...that special education services are needed.”<sup>48</sup> State regulations define “children with disabilities” to include children with both *mental retardation* and *developmental delay*,<sup>49</sup> and define *mental retardation* to be: “significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.”

**Indiana:** Indiana law requires local school corporations to provide an appropriate special education program to every child with a disability who resides within its boundaries.<sup>50</sup> State regulations define “child with disability” to include students with both “*developmental delay*”<sup>51</sup> and “mental disability” who “by reason of the disability, requires special education and related services.”<sup>52</sup> These regulations define “mental disability” to be: “significantly below average general intellectual functioning existing concurrently with deficits in adaptive behavior” that “adversely affects educational performance,”<sup>53</sup> and separately defines “mild mental disability,” “moderate mental disability,” and “severe mental disability.”<sup>54</sup>

**Iowa:** Iowa law requires local school districts to provide, as an integral part of public education, for a free and appropriate public education sufficient to meet the needs of all “children requiring special education.”<sup>55</sup> State law defines “children requiring special education” to include: “persons...who have a disability in obtaining an education because of a...mental ...disability....”<sup>56</sup> State regulations define “mental disability” to be: “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects an individual's educational performance.”<sup>57</sup>

**Kansas:** Kansas law requires local school boards provide a free appropriate public education for “exceptional children” enrolled in the school district and for “children with disabilities” who are placed in a private school or facility by the school district.<sup>58</sup> Kansas regulations define “exceptional children” to be: “children with disabilities and gifted children,” and “children with disabilities” to include: “(1 ) a child evaluated as having *mental retardation* ...and who, by reason thereof, need special education and related services; and (2) for children ages three through nine, a child who is experiencing *developmental delays*”<sup>59</sup> and, by reason thereof, needs special education and related services.”<sup>60</sup> State regulations define “*mental retardation*” to be: “significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.”<sup>61</sup>

**Louisiana:** Louisiana law requires local school systems to provide a free appropriate public education to every “child with an exceptionality” who is a resident,<sup>66</sup> and defines such a child to include both a child with a “mental disability” and a “child experiencing *developmental delays*.”<sup>67</sup> State regulations define “mental disability” to be: “substantial limitations in present functioning ...characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable skill areas: communication, home living, community use, health and safety, leisure, self-care, social skills, self-direction, functional academics, and work.”<sup>68</sup>

**Maine:** Maine law requires all public elementary and secondary schools to provide special education and related services for each “exceptional student” within their jurisdiction,<sup>69</sup> and defines such a student to include: “an individual who ...requires special education because of one or more of the following: ...*mental retardation*.”<sup>70</sup> State regulations define a “student with *mental retardation*” to be a student who “exhibits significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behaviors and manifested during the developmental period that adversely affect the student's educational performance.”<sup>71</sup>

**Maryland:** Maryland law requires each local school system to make a free appropriate public education available to each “child with a disability,”<sup>72</sup> and defines such a child to include: “a child who has been determined through appropriate assessment as having... *mental retardation* ... and who because of that

impairment needs special education and related services.”<sup>73</sup> State regulations define “*mental retardation*” to be: “general intellectual functioning, adversely affecting a student's educational performance, which: (a) Is significantly subaverage; (b) Exists concurrently with deficits in adaptive behavior; and (c) Is manifested during the developmental period.”<sup>74</sup>

**Massachusetts:** Massachusetts law requires local school districts to provide special education and related services to “school age children with special needs” who require special education,<sup>75</sup> and defines such a child to include: “a school age child who, because of a disability consisting of a *developmental delay* or any intellectual ...impairment...is unable to progress effectively in regular education and requires special education services in order to successfully develop the child's individual educational potential ....”<sup>76</sup> State regulations define “intellectual Impairment” to be: “the permanent capacity for performing cognitive tasks, functions, or problem solving is significantly limited or impaired and is exhibited by more than one of the following: a slower rate of learning; disorganized patterns of learning; difficulty with adaptive behavior; and/or difficulty understanding abstract concepts. Such term shall include students with *mental retardation*.”<sup>77</sup>

**Michigan:** Michigan law requires local school districts to provide special education programs and services designed to develop the maximum potential of each handicapped person in living its district.<sup>78</sup> State regulations define “handicapped person” to be: “a person who ...is determined ...to have a characteristic or set of characteristics ...that necessitates special education or ancillary and other related services, or both.”<sup>79</sup> These regulations identify sets of characteristics for “handicapped children” who are “severely mentally impaired,”<sup>80</sup> “trainable mentally impaired”<sup>81</sup> and “educably mentally impaired.”<sup>82</sup>

**Minnesota:** Minnesota law requires every local school to provide special instruction and services for “children with a disability” who are residents of the district,<sup>83</sup> and defines such a child to include: a “child who has a...mental handicap ...and needs special instruction and services ...and at local district discretion from age three to age seven, who needs special instruction and services ... because the child has a substantial *delay* or has an identifiable physical or mental condition known to hinder normal development ....”<sup>84</sup> State regulations define “mentally impaired” to be: “significantly subaverage general intellectual functioning resulting in or associated with concurrent deficits in adaptive behavior that may require special education instruction and related services,”<sup>85</sup> and require that children with a mental impairment be sub-classified as having either a “mild-moderate mental impairment” or “moderate-severe mental impairment.”<sup>86</sup>

**Mississippi:** Mississippi law requires local school districts to provide free appropriate public educational services and equipment for “exceptional children”...for whom the regular school programs are not adequate,<sup>87</sup> and defines such a child to include: “any child ...with *mental retardation*...[who]...by reason thereof, needs special education and related services.”<sup>88</sup> State regulations define “exceptional children” to include both children who have an “educational disability” and who are “*developmentally delayed*.”<sup>89</sup> An “educational disability” is defined to be: “learning problems which vary in degree of severity, including *Educable Mentally Retarded (EMR)*, *Trainable Mentally Retarded (TMR)* or *Severely/ Profoundly Retarded (S/Pr)*. These children have significantly subaverage intelligence existing concurrently with deficits in adaptive behavior and in academic functioning or performance that adversely affects a child's educational performance.”<sup>90</sup>

**Missouri:** Missouri law requires local school districts to provide special education to “children under the age of twenty-one years who have not completed an approved high school program and who, because of mental, physical, emotional or learning problems, require special educational services in order to develop to their maximum capacity.”<sup>91</sup> The Missouri State Plan identifies both “*mental retardation*” and “young child with *developmental delay*”<sup>92</sup> as categories for establishing eligibility for special education services,<sup>93</sup> and defines “*mental retardation*” to be: “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior manifested during the develop mental period that adversely affects a child's educational performance.”<sup>94</sup>

**Montana:** Montana law requires that every school district provide a special education program for each “child with a disability” between the ages of 6 and 18, inclusive,<sup>95</sup> and defines such a child to include: “a child evaluated ...as having a cognitive delay ...and who because of those impairments needs special education and

related services.” “Cognitive delay” is defined as “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.”<sup>96</sup>

**Nebraska:** Nebraska law requires that “every school district provide or contract for special education programs and transportation for all resident ‘children with disabilities’ who would benefit from such programs.”<sup>97</sup> State regulations define such children to include: “those children who have been verified by a multidisciplinary evaluation team ...as children with ...*developmental delay*<sup>98</sup> [or]...mental handicaps ...who because of these impairments need special education and related services.”<sup>99</sup> These regulations define “mental handicap” to be: “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's development or educational performance.”<sup>100</sup>

**Nevada:** Nevada law requires that the superintendent of public instruction provide a special education program and related services to all persons with disabilities who are eligible for services.<sup>101</sup> State Regulations define “disabled person” to include: “a person who has:... *mental retardation [or]...developmental delays.*”<sup>102</sup> These regulations define “*mental retardation*” to be: “a condition that: (1) Is characterized by intellectual functioning at a level that is significantly below average, and which exists concurrently with related limitations in two or more of the following adaptive skill areas: (a) Communication skills; (b) Self-care; (c) Home living; (d) Social skills; (e) Use of the community; (f) Self-direction; (g) Health and safety; (h) Functional academics; (i) Leisure; and (j) Work; (2) Manifests before the age of 18 years; and (3) Adversely affects the educational performance of a pupil.”<sup>103</sup>

**New Hampshire:** New Hampshire law requires that the school districts of the state “provide a free and appropriate public education for all educationally disabled children while taking into consideration the cost of that education when determining appropriateness,”<sup>104</sup> and defines such a child to include: “any person 3 years of age or older but less than 21 years of age who has been ...determined to be *mentally retarded...who because of such impairment, needs special education or special education and educationally related services.*”<sup>105</sup> State regulations define “mental retardation” by incorporating by reference the definition in the IDEA 97 Regulations<sup>106</sup> and include within the definition of a “child with a disability” a child with a “*developmental delay.*”<sup>107</sup>

**New Jersey:** New Jersey law requires local school boards to provide “suitable facilities and programs of education” for all the children between the ages of five and 21 who are classified as handicapped,<sup>108</sup> and provides that “such children be classified under one of the following categories: *mentally retarded [or] ... pre-school hand icapped.*”<sup>109</sup> State law also requires that *mentally retarded* children be further classified into one of three subcategories: “(1) educable *mentally retarded* children;<sup>110</sup> (2) trainable mentally retarded children;<sup>111</sup> and (3) children eligible for day training.”<sup>112</sup> State regulations governing special education eligibility provide listed disabilities,<sup>113</sup> including “cognitively impaired” and “pre-school disabled.”<sup>114</sup> These regulations state that: “Cognitively impaired” corresponds to “mentally retarded” and means “a disability that is characterized by significantly below average general cognitive functioning existing concurrently with deficits in adaptive behavior; manifested during the developmental period that adversely affects a student's educational performance and is characterized by one of the following: (1) Mild cognitive impairment...; (2) Moderate cognitive impairment...; (3) Severe cognitive impairment ....”<sup>115</sup>

**New Mexico:** New Mexico law requires that school districts provide special education and related services appropriate to “children with disabilities” who require special education and related services,<sup>116</sup> and defines such children to include: “those children who are classified as *developmentally disabled* according to the New Mexico Developmental Disabilities Act.”<sup>117</sup> State regulations define such children to include: “school-aged children evaluated... as being ...intellectually disabled ...who because of those impairments need special education and related services,”<sup>118</sup> and define “intellectually disabled” to be: “significantly subaverage general intellectual functioning which exists concurrently with deficits in adaptive behavior and is manifested during the developmental period adversely affecting a child's educational performance.”<sup>119</sup>

**New York:** New York law requires that every school district make available special education and related services to all “students with disabilities” that reside within it,<sup>120</sup> and defines a “student with a disability” to be: “a person under the age of twenty-one who... because of mental, physical or emotional reasons can only receive appropriate educational opportunities from a program of special education.”<sup>121</sup> State regulations define a “student with a disability” to be a student who: “because of mental, physical or emotional reasons, has been identified as having a disability and who requires special services and programs approved by the department ...Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.”<sup>122</sup>

**North Carolina:** North Carolina law provides that “no child with special needs ...be denied a free appropriate public education...”<sup>123</sup> and defines such children to be: “children from age five through age 20 who because of permanent or temporary mental, physical or emotional handicaps need special education, are unable to have all their needs met in a regular class without special education or related services, or are unable to be adequately educated in the public schools. It includes those who are mentally retarded ....”<sup>124</sup> State regulations define “children with disabilities” to include “children who are ...mentally disabled”<sup>125</sup> and define that term to mean: “significantly subaverage general cognitive functioning and a reduced rate of learning. This condition exists concurrently with deficits in adaptive behavior, is manifested during the developmental period, and adversely affects the student's educational performance.”<sup>126</sup> State regulations also include children who are *developmentally delayed* within the definition of “children with special needs.”<sup>127</sup>

**North Dakota:** North Dakota law provides that each school district shall provide special education to “students with disabilities,”<sup>128</sup> and defines such as student as: “an individual who... because of mental, physical, emotional, or learning characteristics requires regular or special education and related services designed to meet the individual's educational needs. The term includes an individual with *mental retardation* ....”<sup>129</sup> State regulations adopt the definition of “*mental retardation*” in the IDEA 97 regulations<sup>130</sup> and establish a “Non-Categorical Delay” eligibility option which may be used for children ages 3 through 6, where the determination of a disability is not clear but delays are well documented.”<sup>131</sup>

**Ohio:** Ohio law mandates that all “handicapped children” three to twenty-one years of age be provided with an appropriate public education,<sup>132</sup> and defines such a child to include: “a person under twenty-two years of age who is developmentally handicapped ...and by reason thereof requires special education.”<sup>133</sup> State regulations define “developmentally handicapped” to mean: “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior manifested during the developmental period, which adversely affects a child's educational performance.”<sup>134</sup> New draft regulations would replace the term “developmentally handicapped” with the term “cognitive disability”<sup>135</sup> and establish a new category of “documented deficit for preschool eligibility.”<sup>136</sup>

**Oklahoma:** Oklahoma law requires local school districts to provide special education and related services necessary for “children with disabilities,” and defines that term to mean “children, as defined in the Individuals with Disabilities Education Act ...who are three (3) years of age.”<sup>137</sup> State law also establishes both “educable mentally handicapped” and “trainable mentally handicapped” as special education eligibility categories and defines them both to mean: “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the development period, which adversely affects a child's educational performance.”<sup>138</sup> Draft state regulations establish new special education eligibility definitions for both “*mental retardation*” and “*developmental delay*” that incorporate IDEA 97 regulatory definitions.<sup>139</sup>

**Oregon:** Oregon law requires local school districts to provide special education for “children with disabilities” who require special education,<sup>140</sup> and defines such children to include: “those school age children ...who require special education because they have been evaluated as having one of the following conditions ...*mental retardation*.”<sup>141</sup> State regulations define “*mental retardation*” to be: “significantly subaverage general intellectual functioning, and includes a student whose intelligence test score is two or more standard deviations below the norm on a standardized individual intelligence test, existing concurrently with deficits in

adaptive behavior and manifested during the developmental period, and that adversely affects a child's educational performance.”<sup>142</sup> State law also defines “preschool children with disabilities” to include children experiencing “developmental delay.”<sup>143</sup>

**Pennsylvania:** Pennsylvania law requires local school districts to provide special education and related services to “children with exceptionalities” in need of such services,<sup>144</sup> and defines such children to be: “children of school age who have a disability or who are gifted, and who, by reason thereof, need specially designed instruction.”<sup>145</sup> State regulations expressly adopt and incorporate by reference the IDEA 97 regulatory definition of the term “child with a disability,” including the category of “*mental* retardation,”<sup>146</sup> and add a new definition of “*developmental delay*.”<sup>147</sup>

**Rhode Island:** Rhode Island law requires all school committees to “provide the type of special education that will best satisfy the needs of every child with a disability...,”<sup>148</sup> and defines the term “*mentally retarded minors*” to be: “all children between the age of three (3) and twenty-one (21) who because of *retarded* intellectual development ...require specialized instruction appropriate to their individual capacity.”<sup>149</sup> State regulations define “child with a disability” to include: “a child, aged 3 to 21, evaluated ...as having *mental retardation* ...and who, by reason thereof, needs special education and related services.”<sup>150</sup> These regulations define “*mental retardation*” as “significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.”<sup>151</sup> State regulations also define the term “child with a disability” for children aged 3 through 5 to include: “a child ...experiencing a *developmental delay*...”<sup>152</sup>

**South Carolina:** South Carolina law requires local school districts to insure an appropriate education for each “handicapped child” resident within the district,<sup>153</sup> and defines such children to include: “those who deviate from the normal either psychologically or physiologically to such an extent that special classes, special facilities, or special services are needed for their maximum development, including educable mentally handicapped, trainable mentally handicapped ....”<sup>154</sup> State regulations define “child with a disability” to include a child with a “mental disability,” define that term as: “*mental retardation*,” and in turn, define “*mental retardation*” to mean: “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a student's educational performance.”<sup>155</sup>

**South Dakota:** South Dakota law requires local school districts to provide special education services to “children in need of special education or special education and related services,” and defines that term to mean: “any person under the age of twenty-one years ...who, because of his educational needs ...is not adequately provided for through the usual facilities and services of the school and requires special education.”<sup>156</sup> State regulations define “students with disabilities” to include: “students evaluated ...as having ...*mental retardation*... which adversely affects educational performance, and who, because of those disabilities, need special education or special education and related services.”<sup>157</sup> Those regulations also provide that “a student three, four, or five years old may be identified as a student with a disability if the student has one of the major disabilities ...or if the student experiences a severe *delay in development* ,”<sup>158</sup>

**Tennessee:** Tennessee law requires that school districts provide all regular and special education corrective and supporting services required by “children with disabilities,”<sup>159</sup> and defines such a child to include: “a child with *mental retardation* [or]...*developmental delay*<sup>160</sup> [or]...functional delay.”<sup>161</sup> State regulations define “*mental retardation*” to be: “substantial limitations in present levels of functioning that adversely affect a child's educational performance. It is characterized by significantly impaired intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period.”<sup>162</sup> State regulations define “functionally delayed” to mean: having or developing “a continuing disability in intellectual functioning and achievement which significantly affects the ability to think and/or act in the general school program, but who is functioning socially at or near a level appropriate to his or her chronological age.”<sup>163</sup>

**Texas:** Texas law provides that eligible “students with disabilities” shall “enjoy the right to a free appropriate public education ,”<sup>164</sup> and defines such a student to include a child who is “at least three but not more than 21

years of age and has one or more of the following disabilities that prevents the student from being adequately or safely educated in public school without the provision of special services: ...*mental retardation* ....”<sup>165</sup> State regulations provide that to be eligible to receive special education services, a student must be a “child with a disability,” including “*mental retardation*” and “non-categorical.”<sup>166</sup> These regulations define a “student with *mental retardation*” to be: “one who has been determined to meet the criteria for mental retardation as stated in 34 CFR, §300.7(c)(6). In meeting the criteria stated in 34 CFR, §300.7(c)(6), a student with mental retardation is one who has been determined to be functioning at two or more standard deviations below the mean on individually administered scales of verbal ability, and either performance or nonverbal ability, and who concurrently exhibits deficits in adaptive behavior.”<sup>167</sup>

**Utah:** Utah law provides that “students with disabilities,” who are between the ages of three and 22 and have not graduated from high school with a regular diploma, are entitled to a free, appropriate public education<sup>168</sup> and define such a student to include: “a student evaluated ...as having an *intellectual disability...or children* age 3 through 7 experiencing *developmental delays*,<sup>169</sup> and who, by reason thereof, needs special education and related services.<sup>170</sup> State regulations define “*intellectual disability*” to be: “significantly below average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.”<sup>171</sup>

**Vermont:** Vermont law requires local school districts to provide a free appropriate public education to “children with disabilities,”<sup>172</sup> and defines such a child to be: “any child in Vermont eligible under state regulations to receive special education.”<sup>173</sup> State regulations define eligibility to receive special education to include children with a “learning impairment or delay,”<sup>174</sup> and define that term to mean: “a delay of sufficient magnitude to cause a student's performance to fall at or below -1.5 standard deviations from the mean of a test of intellectual ability and the student shall show concurrent deficits in adaptive behavior.”<sup>175</sup> Children ages 3 up to the sixth birthday with “a disability caused by a *developmental delay*” are also eligible for special education.<sup>176</sup>

**Virginia:** Virginia law requires each local school system to provide free and appropriate education, including special education, for “children with disabilities” residing within its jurisdiction,<sup>177</sup> and defines such children to include: “persons ...who are *mentally retarded*... and ...who because of such impairments need special education.”<sup>178</sup> State regulations define the same term to include: “a child evaluated ...and determined to have ...a *developmental delay*<sup>179</sup> [or]...*mental retardation* ...who by reason thereof, needs special education and related services.”<sup>180</sup> State regulations define “*mental retardation*” to be: “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance.”<sup>181</sup>

**Washington:** Washington law requires each school district in the state to insure an appropriate educational opportunity for all “children with disabilities” between the ages of three and twenty-one,<sup>182</sup> and defines such children to be: “children in school or out of school who are temporarily or permanently retarded in normal educational processes by reason of physical or mental disability ....”<sup>183</sup> State regulations define a “special education student” to be: “any student, enrolled in school or not ,...(i) who has been identified as having a disability, (ii) whose disability adversely affects the student's educational performance, (iii) and whose unique needs cannot be addressed exclusively through education in general education classes with or without individual accommodations and is determined to be eligible for special education services.”<sup>184</sup> Disabilities specified in these regulations include both “*mental retardation*” and “*developmental delay*.” “*Mental retardation*” is defined as “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects their educational performance and requires specially designed instruction.”<sup>185</sup> “*Developmental delay*” is defined separately for children in the categories of birth to three years, three to six years, and six years to nine years.”<sup>186</sup>

**West Virginia:** West Virginia law provides that each county board of education provide suitable educational facilities, special equipment and such special services as may be necessary... for finding and enumerating “exceptional children.”<sup>187</sup> State regulations set forth eligibility criteria for designated exceptionalities,<sup>188</sup> including “mental impairment,”<sup>189</sup> and “preschool special needs.”<sup>190</sup> “mental impairments” are defined as:

“Substantial limitations in present functioning characterized by significantly subaverage intellectual functioning existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental impairments manifest before age 18.”<sup>191</sup>

**Wisconsin:** Wisconsin law requires local school districts to provide a free appropriate public education to “children with disabilities,”<sup>192</sup> and defines such a child to include: “a child, who by reason of any of the following: cognitive disabilities ...needs special education and related services.”<sup>193</sup> State regulations define “cognitive disability” to be: “significantly subaverage intellectual functioning that exists concurrently with deficits in adaptive behavior and that adversely affects educational performance.”<sup>194</sup> State law also permits but does not require local school districts to provide special education services to children with “*developmental delay*.”<sup>195</sup>

**Wyoming:** Wyoming law requires that each school district having any school age children who possess “a mental, physical or psychological disability” provide for the “appropriate diagnosis, evaluation, education or training and necessary related services ...for those children.”<sup>196</sup> State regulations define “child with a disability” to include: “a child evaluated as having... *developmental* disability[or]...mental disability ...and who by reason thereof, needs special education and related services.”<sup>197</sup> These regulations define “mental disability” to be: “significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child’s educational performance.”<sup>198</sup> “*Developmental disability*’ is defined as: “a significant delay in physical, cognitive, social/emotional, communication, motor or adaptive development that adversely affects the child’s performance.”<sup>199</sup>

#### Notes

- <sup>1</sup> Section 16-39-31 of the Code of Alabama.
- <sup>2</sup> Section 16-39-2 of the Code of Alabama, last amended in 1993.
- <sup>3</sup> Section 16-39-2(4) of the Code of Alabama, last amended in 1976.
- <sup>4</sup> Section 14.30.186 of the Alaska Statutes.
- <sup>5</sup> Section 14.30.350(5) of the Alaska Statutes.
- <sup>6</sup> Section 14.30.350(2) of the Alaska Statutes, last amended prior to 1993, and Sections 990(9) and (18) of Title IV, Chapter 52, of the Alaska Administrative Code, last amended in 1994.
- <sup>7</sup> Section 15-763 of the Arizona Revised Statutes.
- <sup>8</sup> Section 15-761(2) of the Arizona Revised Statutes.
- <sup>9</sup> “Preschool moderate delay” means performance by a preschool child on a norm-referenced test that measures at least one and one-half, but not more than three, standard deviations below the mean for children of the same chronological age in two or more of the following areas: (a) cognitive development; (b) physical development; (c) communication development; (d) social or emotional development; (e) adaptive development. Section 15-761(24) of the Arizona Revised Statutes.
- <sup>10</sup> “Preschool severe delay” means performance by a preschool child on a norm-referenced test that measures more than three standard deviations below the mean for children of the same chronological age in one or more of the following areas: (a) cognitive development; (b) physical development; (c) communication development; (d) social or emotional development; (e) adaptive development. Section 15-761(25) of the Arizona Revised Statutes.
- <sup>11</sup> Section 6-41-205 of the Arkansas Code.
- <sup>12</sup> Section 6-41-203(1) of the Arkansas Code, last amended in 1975.
- <sup>13</sup> Section 56040 of the California Education Code.

- 14 Section 56026 of the California Education Code. The definition cross-references and incorporates the definition of “child with a disability” found in clause (ii) of subparagraph (A) of paragraph (3) of Section 1401 of Title 20 of the United States Code. The term “severely disabled” is defined as “individuals with exceptional needs who require intensive instruction and training in programs serving pupils with the following profound disabilities: ...severe *mental retardation* ....” Section 16191 of the California Education Code.
- 15 Section 3001 of Title 5, Division 1, Chapter 3 of the California Code of Regulations.
- 16 Section 22-20-106 of the Colorado Revised Statutes.
- 17 Section 22-20-103(1.5) of the Colorado Revised Statutes, last amended in 1993.
- 18 Subsection 2.02 (4) of the Exceptional Children's Act Rules of the Colorado State Board of Education and Department of Education, last amended in 1998. Criteria for determining *significant limited intellectual capacity* include: (1) a score of more than 2.0 standard deviations below the mean on individually administered measures of cognition; (2) evidence that the level of independent adaptive behavior is significantly below the culturally imposed expectations of personal and social responsibilities; and (3) a deficiency in academic achievement, as indicated by scores 2.0 standard deviations below the mean in measures of language, reading and math.
- 19 Section 10-76d of the General Statutes of Connecticut.
- 20 Section 10-76a(3) of the General Statutes of Connecticut defines “exceptional child” to be “a child who deviates either intellectually, physically or emotionally so markedly from normally expected growth and development patterns that he or she is or will be unable to progress effectively in a regular school program and needs a special class, special instruction or special services.”
- 21 Section 10-76a(6) of the General Statutes of Connecticut. The term “*developmental delay*” is defined as: “a significant delay in one or more of the following areas: (A) Physical development; (B) communication development; (C) cognitive development; (D) social or emotional development; or (E) adaptive development, as measured by appropriate diagnostic instruments and procedures and demonstrated by scores obtained on an appropriate norm-referenced standardized diagnostic instrument.”
- 22 Sections 10-76a(5) and 10-76a(7) of the General Statutes of Connecticut. As defined in the Individuals with Disabilities Act (20 USC 1400, et seq.) “mental retardation” means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance. Definitions of “educable,” “trainable” and “severely or profoundly” mentally retarded child were deleted in 1979. In 1996, the subdivision was revised to define “child with mental retardation” based on the federal law. In 1998, a new subsection was added defining “developmental delay.”
- 23 State of Connecticut. (2000). Guidelines for Identifying Children With Intellectual Disability/Mental Retardation. Hartford, CN: Connecticut Department of Education. “Over the past decade, several efforts have been made to describe mental retardation in terms of needed levels of support rather than to define it in terms of deficits. There have also been efforts to shift from the term mental retardation to intellectual disability, which more accurately connotes the cognitive underpinning of the disability. While the legal terminology for the disability category currently remains mental retardation, documents produced by the Connecticut State Department of Education (CSDE) Bureau of Special Education and Pupil Services will, henceforth, adopt the term ‘intellectual disability (ID)’ and its variants (e.g. intellectual disabilities).”
- 24 Ibid
- 25 Sections 3101(4) (last amended in 1977) and 3122 of the Delaware Code.

- 26 Paragraph 4.4 of Chapter 925 of the Delaware Department of Education Regulations, last amended in 1999. The term “*developmental delay*” is defined as: “a significant delay in one or more of the following developmental domains: cognitive, communication (expressive and/or receptive), physical (gross motor and/or fine motor), social/emotional functioning, and adaptive behavior.”
- 27 Chapter 925 of the Delaware Department of Education Regulations.
- 28 Paragraph 4.9 of Chapter 925 of the Delaware Department of Education Regulations (last amended in 1999). The *degree of mental disability* is defined to be: Educable Mental Disability (EMD) - I.Q. 50-70, +5 points; Trainable Mental Disability (TMD) - I.Q. 35-50, +5 points; Severe Mental Disability (SMD) - I.Q. below 35.”
- 29 Section 31-1861 of the District of Columbia Code, last amended in 2000, cross-references and incorporates the definitions in Section 101(a)(1) of the Individuals with Disabilities Education Act and Section 7(8) of the Rehabilitation Act of 1973.
- 30 Section 230.23(4)(m) of Title XVI of the 2001 Florida Statutes.
- 31 Section 228.041(18) of Title XVI of the 2001 Florida Statutes, last amended in 1997. State regulations define “*developmentally delayed*” to be: “a delay in one or more of the following areas: (a) adaptive or self-help development; (b) cognitive development; (c) communication development; (d) social or emotional development; or (e) physical development including fine, or gross, or perceptual motor skills.” Section 6A-6.03027 of the Administrative Rules of the Florida State Board of Education, last amended in 1993.
- 32 Section 6A-6.03011 of the Administrative Rules of the Florida State Board of Education, last amended in 1988.
- 33 *Ibid.* “An educable mentally handicapped student is a student who is mildly impaired in intellectual and adaptive behavior and whose development reflects a reduced rate of learning. The measured intelligence of an educable mentally handicapped student generally falls between two (2) and three (3) standard deviations below the mean and the assessed adaptive behavior falls below that of other students of the same age and socio-cultural group.”
- 34 *Ibid.* “A trainable mentally handicapped student is a student who is moderately or severely impaired in intellectual and adaptive behavior and whose development reflects a reduced rate of learning. The measured intelligence of a trainable mentally handicapped student generally falls between three (3) and five (5) standard deviations below the mean and the assessed adaptive behavior falls below that of other students of the same age and socio-cultural group.”
- 35 *Ibid.* “A profoundly mentally handicapped student is a student who is profoundly impaired in intellectual and adaptive behavior and whose development reflects a reduced rate of learning. The measured intelligence of a profoundly mentally handicapped student generally falls below five (5) standard deviations below the mean and the assessed adaptive behavior falls below that of other students of the same age and socio-cultural group.”
- 36 Section 20-2-150(a) of the Georgia Code.
- 37 Section 160-4-7-02 of the Rules of the Georgia State Board of Education Pertaining to Special Education (Exceptional Students), last amended in 2000.
- 38 “Significantly subaverage general intellectual functioning” is defined as “approximately 70 IQ or below as measured by a qualified psychological examiner on individually administered, standardized measures of intelligence.” “Deficits in adaptive behavior” are defined as “significant limitations in an individual's effectiveness in meeting the standards of maturation, learning, personal independence or social responsibility, and especially school performance that is expected of the individual's age-level and cultural group, as determined by clinical judgment.”

- 39 Section 160-4-7-02 (Appendix E) of the Rules of the Georgia State Board of Education Pertaining to Special Education (Exceptional Students). *Mild intellectual disability* is defined as: “(1) Intellectual functioning ranging between an upper limit of approximately 70 to a lower limit of approximately 55; and (2) Deficits in adaptive behavior that significantly limit an individual's effectiveness in meeting the standards of maturation, learning, personal independence or social responsibility, and especially school performance that is expected of the individual's age level and cultural group, as determined by clinical judgment.” *Moderate intellectual disability* is defined as: “(1) Intellectual functioning ranging from an upper limit of approximately 55 to a lower limit of approximately 40; and (2) Deficits in adaptive behavior that significantly limit an individual's effectiveness in meeting the standards of maturation, learning, personal independence or social responsibility, and especially school performance that is expected of the individual's age-level and cultural group as determined by clinical judgment.” *Severe intellectual disability* is defined as: “(1) Intellectual functioning ranging from an upper limit of approximately 40 to a lower limit of approximately 25; and (2) Deficits in adaptive behavior that significantly limit an individual's effectiveness in meeting the standards of maturation, learning, personal independence or social responsibility and especially school performance that is expected of the individual's age-level and cultural group as determined by clinical judgment.” *Profound intellectual disability* is defined as: “(1) Intellectual functioning below approximately 25; and (2) Deficits in adaptive behavior that significantly limit an individual's effectiveness in meeting the standards of maturation, learning, personal independence or social responsibility and especially school performance that is expected of the individual's age-level and cultural group, as determined by clinical judgment.”
- 40 Section 302A-436 of the 2000 Hawaii Revised Statutes, last amended in 1996.
- 41 Section 302A-101(1) of the 2000 Hawaii Revised Statutes, last amended in 1996.
- 42 Section 22 of Title 8, Chapter 56 of the Hawaii Administrative Rules, last amended in 2000.
- 43 *Ibid.*
- 44 Section 33-2002 of the Idaho Code.
- 45 Section 33-2001(3) of the Idaho Code.
- 46 Section 8(b)(iii) of the Administrative Rules of the State Board of Education, last amended August 2001.
- 47 Section 226.50 of Title 23 of the Illinois Administrative Code.
- 48 Section 14-1.02 of Act 5 of Chapter 105 of the Illinois Compiled Statutes.
- 49 Section 226.75 of Title 23 of the Illinois Administrative Code. “Developmental delay” is defined to be: “delay in physical development, cognitive development, communication development, social or emotional development, or adaptive development of children from three through five years of age.”
- 50 Section 14(a) of Title 20, Article 1, Chapter 6 of the Indiana Code, last amended in 1993.
- 51 Section 5(a) of Title 511, Article 7, Rule 26 of the Indiana State Board of Education, last amended in 2000. For students who are at least three years of age and not more than five years of age and not eligible to be enrolled in kindergarten, state regulations define “*developmental delay*” to be: “a delay that adversely affects daily life or educational performance of either two (2) standard deviations below the mean in one (1) of the following developmental areas or one and one-half (1.5) standard deviations below the mean in any two (2) of the following developmental areas: (1) gross or fine motor development; (2) cognitive development; (3) receptive or expressive language development; (4) social or emotional development; and (5) self-help or other adaptive development.”
- 52 Section 69 of Title 511, Article 7, Rule 17 of the Indiana State Board of Education, last amended in 2000.

- 53 Section 9(a) of Title 511, Article 7, Rule 26 of the Indiana State Board of Education, last amended in 2000.
- 54 Section 9(c)-(e) of Title 511, Article 7, Rule 26 of the Indiana State Board of Education, last amended in 2000. “(c) A student with a mild mental disability will generally exhibit: (1) measured intelligence two (2) or more standard deviations below the mean or average of the testing instrument used; and (2) an adaptive behavior profile within the range of a mild mental disability. (d) A student with a moderate mental disability will generally exhibit: (1) measured intelligence three (3) or more standard deviations below the mean or average of the testing instrument used; and (2) an adaptive behavior profile within the range of a moderate mental disability. (e) A student with a severe mental disability will generally exhibit: (1) measured intelligence four (4) or more standard deviations below the mean or average of the testing instrument used; and (2) an adaptive behavior profile within the range of a severe mental disability.”
- 55 Section 2(3) of Chapter 256b of the Iowa Code 2001, last amended in 1992.
- 56 Section 2(1) of Chapter 256b of the Iowa Code 2001, last amended in 1992, and Sections 3(1) and 3(2) of Chapter 41 of Part 281 of the Iowa Administrative Code.
- 57 Section 5 of Chapter 41 of Part 281 of the Iowa Administrative Code.
- 58 Section 966 of Chapter 72 of the Kansas Statutes, last amended in 1999.
- 59 Kansas Administrative Regulations 91-40-1(q).
- 60 Kansas Administrative Regulations 91-40-1(k) and (x).
- 61 Kansas Administrative Regulations 91-40-1(oo). “*Developmental delay*’ is defined as: “such a deviation from average development in one or more of the following developmental areas that special education and related services are required: (A) physical; (B) cognitive; (C) adaptive behavior; (D) communication; or (E) social or emotional development.”
- 62 Section 230 of Chapter 157 of the Kentucky Revised Statutes.
- 63 Section 200(1)(k) of Chapter 157 of the Kentucky Revised Statutes, last amended in 2001. For children ages three through eight, “*developmental delay*’ is defined as: “a significant discrepancy between a child’s current level of performance in basic skills such as cognition, language or communication, self-help, social-emotional, or fine or gross motor, and the expected level of performance for that age.”
- 64 Section 200(1)(e) of Chapter 157 of the Kentucky Revised Statutes, last amended in 2001.
- 65 707 Kentucky Administrative Regulations 280, Section 1(33). “Mild *mental disability* means (1) cognitive functioning is at least two (2) but no more than three (3) standard deviations below the mean; (2) adaptive behavior deficit is at least two (2) standard deviations below the mean; (3) a severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and (4) is typically manifested during the developmental period. Functional mental disability means: (1) cognitive functioning is at least three (3) or more standard deviations below the mean; (2) adaptive behavior deficits are at least three (3) or more standard deviations below the mean; (3) a severe deficit exists in overall academic performance including acquisition, retention, and application of knowledge; and (4) is typically manifested during the developmental period.”
- 66 Section 1941 of Chapter 17 of the Louisiana Revised Statutes, last amended in 1998, and Section 401 of Bulletin 1706 of the Louisiana State Board of Education, issued in 1999.
- 67 Section 1943(4) of Chapter 17 of the Louisiana Revised Statutes, last amended in 1998. The definition of “developmental delay’ applies only to children with a disability, aged three through nine years. “*Developmental delay*’ is defined as: “a disability in which students ...are identified as experiencing *developmental delays* in one or more of the following areas: physical development, cognitive

development, communication development, social or emotional development or adaptive development.”

- 68 Section 904 of Bulletin 1706 of the Louisiana State Board of Education, issued in 1999.
- 69 Chapters 301 and 303 of Title 20-A of the Maine Revised Statutes, last amended in 1983.
- 70 Section 7001(2)(C)(7) of Title 20-A of the Maine Revised Statutes, last amended in 1999, and Section 4.1 of Chapter 101 of the Special Education Regulations of the Maine Department of Education, issued in 1999.
- 71 Section 3.7 of Chapter 101 of the Special Education Regulations of the Maine Department of Education, issued in 1999.
- 72 Section 403 of Title 8 of the Maryland Statutes 2000.
- 73 Section 401(a)(2) of Title 8 of the Maryland Statutes 2000.
- 74 Section 3(B)(35) of Title 13A.05.01 of the Code of Maryland Agency Regulations, last amended in 2000.
- 75 Section 2 of Chapter 71 B of the General Laws of Massachusetts.
- 76 Section 1 of Chapter 71 B of the General Laws of Massachusetts.
- 77 Section 28.02(7)(c) of Chapter 603 of the Code of Massachusetts Regulations.
- 78 Section 1751(1) of Title 380 of the Michigan Compiled Laws.
- 79 Rule 340.1702 of the Michigan Administrative Code, last amended in 1997.
- 80 Rule 340.1703 of the Michigan Administrative Code. “The severely mentally impaired shall be determined through manifestation of all of the following behavioral characteristics: (a) Development at a rate approximately 4½ or more standard deviations below the mean as determined through intellectual assessment. (b) Lack of development primarily in the cognitive domain. (c) Impairment of adaptive behavior.”
- 81 Rule 340.1704 of the Michigan Administrative Code. “The trainable mentally impaired shall be determined through manifestation of all of the following behavioral characteristics: (a) Development at a rate approximately 3 to 4½ standard deviations below the mean as determined through intellectual assessment. (b) Lack of development primarily in the cognitive domain. (c) Impairment of adaptive behavior.”
- 82 Rule 340.1705 of the Michigan Administrative Code. “The educable mentally impaired shall be determined through the manifestation of all of the following behavioral characteristics: (a) Development at a rate approximately 2 to 3 standard deviations below the mean as determined through intellectual assessment. (b) Scores approximately within the lowest 6 percentiles on a standardized test in reading and arithmetic. This requirement shall not apply if the child is not age or grade appropriate for formal or standardized testing. (c) Lack of development primarily in the cognitive domain. (d) Impairment of adaptive behavior.”
- 83 Section 3(a) of Chapter 125A of the Minnesota Statutes 2000 and Section 300 of Chapter 3525 of the Minnesota Rules.
- 84 Section 2 of Chapter 125A of the Minnesota Statutes 2000, last amended in 1998.
- 85 Section 1333(1) of Chapter 3525 of the Minnesota Rules.
- 86 Sections 1333(2) and (3) of Chapter 3525 of the Minnesota Rules.
- 87 Section 1 of Title 37, Chapter 23 of the Mississippi Laws.
- 88 Section 3(1) of Title 37, Chapter 23 of the Mississippi Laws.

- <sup>89</sup> Ibid. The category of “*developmentally delayed*” is defined as “a noncategorical disability” for children ages birth through five (5) that is described according to functional and/or developmental levels. “Children included in this population either have: (a) established delays in two (2) or more of the following areas ...or (b) a diagnosed disorder of known etiology which will affect development in a negative fashion and has a high probability of resulting in a developmental delay.”
- <sup>90</sup> Mississippi Department of Education, Proposed Policies and Procedures Regarding Children with Disabilities under IDEA Amendments of 1997 (Appendix A).
- <sup>91</sup> Section 675(2) of Title XI, Chapter 162 of the Missouri Revised Statutes.
- <sup>92</sup> Ibid. “*Young child with a developmental delay*” is defined as: “a child ages 3 through 5 who is experiencing *developmental delays*, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development social or emotional development, or adaptive development, and who need special education and related services.”
- <sup>93</sup> The 2001 Missouri IDEA, Part B State Plan.
- <sup>94</sup> Ibid.
- <sup>95</sup> Section 411(2) of Title 20, Chapter 7 of the Montana Code Annotated 2001.
- <sup>96</sup> Section 401(4) and (5) of Title 20, Chapter 7 of the Montana Code Annotated 2001, last amended in 1999.
- <sup>97</sup> Section 1127 of Chapter 79 of the Nebraska Revised Statutes.
- <sup>98</sup> Section 3.07M of Title 92, Chapter 51 of the Nebraska Administrative Code, last amended in 1999. “*Developmental delay*” is defined as: “having either a significant delay in the function of one or more of the following areas: cognitive development; physical development; communicative development; social or emotional development; or adaptive behavior or skills development or a diagnosed physical or medical condition that has a high probability of resulting in a substantial delay in function in one or more of such areas.”
- <sup>99</sup> Section 3.07 of Title 92, Chapter 51 of the Nebraska Administrative Code, last amended in 1999.
- <sup>100</sup> Section 3.07E of Title 92, Chapter 51 of the Nebraska Administrative Code, last amended in 1999.
- <sup>101</sup> Section 10(1) of Chapter 395 of the Nevada Revised Statutes. f
- <sup>102</sup> Section 10(1) of Chapter 395 of the Nevada Administrative Code.
- <sup>103</sup> Section 55(1) of Chapter 388 of the Nevada Administrative Code.
- <sup>104</sup> Section 1 of Chapter 186C of the New Hampshire Revised Statutes Annotated, last amended in 1988.
- <sup>105</sup> Section 2(1) of Chapter 186C of the New Hampshire Revised Statutes Annotated, last amended in 1988. In 1999, Section 2 was amended to add a definition of “developmentally delayed child:” “a child between 3 and 9 years of age, who, because of impairments in development, needs special education or special education and educationally related services, may be identified as being developmentally delayed provided that such a child must first be determined to have an educationally disabling condition as defined in RSA 186-C:2, I.”
- <sup>106</sup> Section 2.9 of Chapter Ed 1100 of the Administrative Rules of the New Hampshire State Board of Education, last amended in 1996.
- <sup>107</sup> Section 9 of Part 1102 of the New Hampshire Department of Education Standards for the Education of Children with Disabilities.
- <sup>108</sup> Sections 6 and 13 of Title 18A, Chapter 46 of the New Jersey Permanent Statutes.

- <sup>109</sup> Section 8 of Title 18A, Chapter 46 of the New Jersey Permanent Statutes, last amended in 1990. As used in this context, the term “mentally retarded” is not defined by the New Jersey statutes.
- <sup>110</sup> Section 9(a) of Title 18A, Chapter 46 of the New Jersey Permanent Statutes, last amended in 1975, which defines “educable *mentally retarded* children” as “those who may be expected to succeed with a minimum of supervision in homes and schools and community life and are characterized particularly by reasonable expectation that at maturity they will be capable of vocational and social independence in competitive environment.”
- <sup>111</sup> Section 9(b) of Title 18A, Chapter 46 of the New Jersey Permanent Statutes, last amended in 1975, which defines “trainable *mentally retarded* children” as those “who are so retarded that they cannot be classified as educable but are, notwithstanding, potentially capable of self-help, of communicating satisfactorily, or participating in groups, of directing their behavior so as not to be dangerous to themselves or others and of achieving with training some degree of personal independence and social and economic usefulness within sheltered environments.”
- <sup>112</sup> Section 9(c) of Title 18A, Chapter 46 of the New Jersey Permanent Statutes, last amended in 1975, which defines “children eligible for day training” as those “who are those so severely mentally retarded as to be incapable of giving evidence of understanding and responding in a positive manner to simple directions expressed in the child's primary mode of communication and who cannot in some manner express basic wants and needs.”
- <sup>113</sup> Section 3.5 of Title 6A, Chapter 14 of the New Jersey Administrative Code.
- <sup>114</sup> Ibid. “‘Preschool disabled’ corresponds to preschool handicapped and means an identified disabling condition and/or a measurable developmental impairment which occurs in children between the ages of three and five years and requires special education and related services.”
- <sup>115</sup> Section 3.5(c)(1) of Title 6A, Chapter 14 of the New Jersey Administrative Code.
- <sup>116</sup> Sections 5 and 6 of Title 22, Article 13 of the New Mexico Statutes Annotated.
- <sup>117</sup> Section 6C of Title 22, Article 13 of the New Mexico Statutes Annotated. “Developmental disability” is defined for a child, birth through two years of age, to be: “developmental delays or the risk of such delays; and for all children: a severe chronic disability of a person that: (1) is attributable to a mental or physical impairment, including the result from trauma to the brain, or combination of mental and physical impairments; (2) is manifested before the person reaches the age of twenty-two years; (3) is expected to continue indefinitely; (4) results in substantial functional limitations in three or more of the following areas of major life activity: (a) self-care; (b) receptive and expressive language; (c) learning; (d) mobility; (e) self-direction; (f) capacity for independent living; and (g) economic self-sufficiency; and (5) reflects the person's need for a combination and sequence of special, interdisciplinary or generic care treatment or other support and services that are of life-long or extended duration and are individually planned and coordinated.” Section 6A of Title 8, Article 16A of the New Mexico Statutes Annotated.
- <sup>118</sup> Section 7.5 of Title 6, Chapter 5, Part 2 of the Policies of the New Mexico Department of Education (1997).
- <sup>119</sup> Section 7.5.5 of Title 6, Chapter 5, Part 2 of the Policies of the New Mexico Department of Education (1997).
- <sup>120</sup> Section 4402 of Article 89 of the New York State Consolidated Laws.
- <sup>121</sup> Section 4401(1) of Article 89 of the New York State Consolidated Laws.
- <sup>122</sup> Section 200.1(zz)(7) of the Regulations of the New York Commissioner of Education (Policy 00-05), last amended 2000.
- <sup>123</sup> Section 111 of Chapter 115C of the North Carolina General Statutes.

- 124 Section 109 of Chapter 115C of the North Carolina General Statutes, last amended in 1996.
- 125 Section 1501 A of the Procedures Governing Programs and Services for Children with Disabilities of the North Carolina State Board of Education, last amended in 2000.
- 126 Section 1501 A(5) of the Procedures Governing Programs and Services for Children with Disabilities of the North Carolina State Board of Education, last amended in 2000.
- 127 Section 1501 A(10) of the Procedures Governing Programs and Services for Children with Disabilities of the North Carolina State Board of Education, last amended in 2000. Children who are “developmentally delayed” are children “ages three through seven whose development and/or behavior is so significantly delayed or atypical that special education and related services are required.”
- 128 Section 15.1-32-08 of the North Dakota Century Code.
- 129 Section 15.1-32-01(4) of the North Dakota Century Code.
- 130 Parent Guide to Special Education, North Dakota Department of Public Instruction (August 1999).
- 131 Guidelines: Evaluation Process, North Dakota Department of Public Instruction (August 1999).
- 132 Section 3323.02 of the Ohio Revised Code.
- 133 Section 3323.01 (A) of the Ohio Revised Code, last amended in 1999.
- 134 Rule 3301-51-01 (N) of the Ohio Administrative Code.
- 135 Rule 3301-51-01 (b) of the Rules for the Education of Children with Disabilities 3-21 Years of Age, Ohio Department of Education (Draft 2.1): "Cognitive disability (*mental retardation*)' means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance. (i) 'Significantly subaverage general intellectual functioning' refers to an intelligence quotient of seventy or below as determined through a measure of cognitive functioning administered by a qualified psychologist using a test designed for individual administration. Based on a standard error of measurement and clinical judgement, a child may be determined to have significant subaverage general intellectual functioning with an intelligence quotient not to exceed seventy-five. (ii) 'Deficits in adaptive behavior' means deficits in two or more applicable skill areas occurring within the context of the child's environments typical of the person's age peers."
- 136 Section 3301-51-01 (m) of the Rules for the Education of Children with Disabilities 3-21 Years of Age, Ohio Department of Education (Draft 2.1): "'Documented deficit for preschool eligibility' means an area of development or functioning that has been determined to be deficient based on data obtained through structured interview, structured observation, and norm-referenced and criterion-referenced curriculum based assessments. (1) Except in the areas of hearing and vision shall be determined by (a) A score of two standard deviations below the mean in one area or scores of one and one-half standard deviations below the mean in two areas outlined in paragraph (J)(3) of rule 3301-51-06 of the Administrative Code."
- 137 Section 70-13-101 of the Oklahoma Statutes, last amended in 2000.
- 138 Sections 70-18-109.5(5) and (11) of the Oklahoma Statutes, last amended in 1990.
- 139 Draft Special Education Policies and Procedures Manual (May 2000) of the Oklahoma State Department of Education.
- 140 Section 221 of Chapter 343 of the Oregon Revised Statutes.
- 141 Section 35(1) of Chapter 343 of the Oregon Revised Statutes.
- 142 Section 3(f) of Oregon Administrative Rule 581-015-0005, last amended in 2000.

- <sup>143</sup> Section 35(14) of Chapter 343 of the Oregon Revised Statutes. "All children from: (a) Birth until three years of age who are eligible for early intervention services because they are experiencing developmental delay or have diagnosed mental or physical conditions that will result in developmental delay; or (b) Three years of age to eligibility for entry into kindergarten who need early childhood special education services because they are experiencing developmental delay or because they have been evaluated as having one of the conditions listed for school age children under subsection (1) of this section."
- <sup>144</sup> Sections 13-1371 and 13-1372 of Title 24 of Purdon's Pennsylvania Statutes Annotated.
- <sup>145</sup> Section 13-1371(1) of Purdon's Pennsylvania Statutes Annotated, last amended in 1995.
- <sup>146</sup> Section 14.102(a)(2)(ii) of the Pennsylvania Code, adopted June 8, 2001, incorporating 34 CFR 300.7(a) and (c)), published at 64 FR 12418-12469 on March 12, 1999.
- <sup>147</sup> "Developmental delay - A child who is less than the age of beginners and at least 3 years of age is considered to have a developmental delay when one of the following exists: (i) The child's score, on a developmental assessment device, on an assessment instrument which yields a score in months, indicates that the child is delayed by 25% of the child's chronological age in one or more developmental areas. (ii) The child is delayed in one or more of the developmental areas, as documented by test performance of 1.5 standard deviations below the mean on standardized tests."
- <sup>148</sup> Section 1(a) of Title 16, Chapter 24 of the General Laws of Rhode Island.
- <sup>149</sup> Section 7 of Title 16, Chapter 24 of the General Laws of Rhode Island.
- <sup>150</sup> Section 300.7(1)(a) of the Regulations of the Rhode Island Board of Regents for Elementary and Secondary Education Governing the Education of Children with Disabilities (December 2000).
- <sup>151</sup> Section 300.7(6) of the Regulations of the Rhode Island Board of Regents for Elementary and Secondary Education Governing the Education of Children with Disabilities (December 2000).
- <sup>152</sup> Section 300.7(1)(b) of the Regulations of the Rhode Island Board of Regents for Elementary and Secondary Education Governing the Education of Children with Disabilities (December 2000). "*A developmental delay* or disability is defined as a twenty five per cent (25%) delay and/or score equal to or greater than two standard deviations below the mean in one of the following areas of development; or a score equal to or greater than 1.5 standard deviations below the mean in two (2) or more of the following areas of development: social/emotional or behavioral adjustment, cognition, communication, receptive language, expressive language, visual perception, fine motor, or gross motor."
- <sup>153</sup> Section 50 of Title 59, Chapter 33 of the South Carolina Code of Laws.
- <sup>154</sup> Section 20(a) of Title 59, Chapter 33 of the South Carolina Code of Laws.
- <sup>155</sup> Regulations 43-243 ("Special Education, Education of Students with Disabilities") and 43-243.1, ("Criteria for Entry into Programs of Special Education for Students with Disabilities"), of the South Carolina State Board of Education, last amended in 2000. Regulation 43-243.1 contains the following explanation: "The categories of educable mental disability, trainable mental disability, and profound mental disability have been merged into one category called 'mental disability' (MD), in line with the federal definition of the term."
- <sup>156</sup> Section 1 of Chapter 13-37 of the South Dakota Codified Laws, last amended in 1988.
- <sup>157</sup> Section 24.01(1) of Article 24:05 of the Rules of the South Dakota Board of Education, last amended in 2000. Section 24.01(11), last amended in 1997, defines "*mental retardation*" to be: "significantly below average intellectual functioning existing concurrently with deficits in adaptive behavior and is generally manifested before age eighteen."
- <sup>158</sup> Section 24.01(9) of Article 24:05 of the Rules of the South Dakota Board of Education, last amended in 2000. "A student with a severe delay in development functions at a developmental level

two or more standard deviations below the mean in any one area of development specified in this section or 1.5 standard deviations below the mean in two or more areas of development. The areas of development are cognitive development, physical development, communication development, social and emotional development, and adaptive functioning skills."

- 159 Section 103(a) of Title 49, Chapter 10 of the Tennessee Code.
- 160 Section 1(15)(d) of Chapter 0520-1-9 of the Rulemaking Hearing Rules of the Tennessee State Board of Education. *Developmental Delay* is defined for children ages three through nine as "experiencing *developmental delays* as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: physical, cognitive, communication development, social or emotional, or adaptive development, that adversely affects a child's educational performance."
- 161 Section 102(1)(B) of Title 49, Chapter 10 of the Tennessee Code, last amended in 1998, and Section 1(8) of Chapter 0520-1-9 ("Special Education Programs and Services") of the Rulemaking Hearing Rules of the Tennessee State Board of Education.
- 162 Section 1(15)(i) of Chapter 0520-1-9 of the Rulemaking Hearing Rules of the Tennessee State Board of Education.
- 163 Section 1(15)(f) of Chapter 0520-1-9 of the Rulemaking Hearing Rules of the Tennessee State Board of Education.
- 164 Section 29.003(a) of the Texas Education Code.
- 165 Section 29.003 (b)(2) of the Texas Education Code.
- 166 Section 89.1040(a)(c)(13) of Title 19 of the Texas Administrative Code, last amended in 2001. The term "non-categorical disability" is defined as applicable to "a student between the ages of 3-5 who is evaluated as having *mental retardation*, emotional disturbance, a specific learning disability, or autism ...."
- 167 Section 89.1040(a)(c)(5) of Title 19 of the Texas Administrative Code, last amended in 2001.
- 168 Section 301(1)(a) of Title 53A, Chapter 15 of the Utah Code.
- 169 Section 1.E(12) of the Utah State Board of Education Special Education Rules, last amended in August 2001. *"Developmental delay"* is defined as: "a significant delay or deficit in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development."
- 170 Section 1.E(52) of the Utah State Board of Education Special Education Rules, last amended in August 2001.
- 171 Section 1.E(23) of the Utah State Board of Education Special Education Rules, last amended in August 2001.
- 172 Sections 2941 and 2944 of Title 16, Chapter 101 of the Vermont Statutes.
- 173 Section 2942(1) of Title 16, Chapter 101 of the Vermont Statutes.
- 174 Section 2362.1 (a) of the Special Education Regulations of the Vermont Department of Education, Vermont State Board of Education Manual of Rules and Practices, effective August 2001. "The disability must also result in an adverse effect on the child's educational performance (in one or more basic skill areas) and the child must need special education services to benefit from his or her educational program and this support cannot be provided through the educational support system, standard instructional conditions or supplementary aids and services provided in the school."
- 175 Section 2362.1 (a) of the Special Education Regulations of the Vermont Department of Education, Vermont State Board of Education Manual of Rules and Practices, effective August 2001.

- <sup>176</sup> Section 2361(2) of the Special Education Regulations of the Vermont Department of Education, Vermont State Board of Education Manual of Rules and Practices, effective August 2001. "A *developmental delay*' must be determined through an evaluation "where the child demonstrates at least a 40% delay in one or more of the following fundamental skills: (i) Receptive and/or expressive communication skills; (ii) Adaptive behavior skills such as self care and personal social skills; (iii) Gross or fine motor skills; or (iv) Cognitive skills such as perception, memory, processing and reasoning."
- <sup>177</sup> Section 215 of Title 22.1, Chapter 13 of the Code of Virginia.
- <sup>178</sup> Section 213 of Title 22.1, Chapter 13 of the Code of Virginia, last amended in 2001.
- <sup>179</sup> *Ibid.* Section 56F(1) of Title 8, Chapter 80 of the Virginia Administrative Code, last amended in October 2000, defines "*developmental delay*' to be: "a disability affecting a child ages two through eight ...who is experiencing *developmental delays*, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development," and provides that "The local educational agency shall include developmental delay as one of the disability categories when determining whether a preschool child, aged two to five, inclusive, is eligible under this chapter."
- <sup>180</sup> Section 10 of Title 8, Chapter 80 (Regulations of the Virginia Board of Education Governing Special Education Programs for Children with Disabilities in Virginia) of the Virginia Administrative Code, last amended in October 2000.
- <sup>181</sup> Section 10 of Title 8, Chapter 80 of the Virginia Administrative Code, last amended in October 2000.
- <sup>182</sup> Section 20 of Title 28A, Chapter 28A-155 of the Revised Code of Washington, last amended in 1995.
- <sup>183</sup> *Ibid.*
- <sup>184</sup> Section 35(2)(a) of Title 392, Chapter 392-172 (Rules for the Provision of Special Education to Special Education Students) of the Washington Administrative Code, last amended in 1999.
- <sup>185</sup> Section 134 of Title 392, Chapter 392-172 of the Washington Administrative Code, last amended in 1999.
- <sup>186</sup> Sections 114 and 116 of Title 392, Chapter 392-172 of of the Washington Administrative Code, last amended in 1999.
- <sup>187</sup> Section 2 of Article 20, Chapter 18 of the West Virginia Code.
- <sup>188</sup> Section 4.1.2(b)(A) of Title 126, Series 16 of the Legislative Rules of the West Virginia State Board of Education (Regulations for the Education of Exceptional Students), issued June 15, 2001.
- <sup>189</sup> Section 4.1.3(g) of Title 126, Series 16 of the Legislative Rules of the West Virginia State Board of Education.
- <sup>190</sup> Section 4.1.3(j) of Title 126, Series 16 of the Legislative Rules of the West Virginia State Board of Education. "Preschool special needs" are defined as "*developmental delays* in two (2) or more of the following areas: cognition, fine motor, gross motor, communication, social/ emotional/affective development, self-help that are manifested in children ages 3-5."
- <sup>191</sup> Section 4.1.3(g) of Title 126, Series 16 of the Legislative Rules of the West Virginia State Board of Education.
- <sup>192</sup> Section 115.77 of the Wisconsin Statutes Annotated.
- <sup>193</sup> Section 115.76(a) of the Wisconsin Statutes Annotated.
- <sup>194</sup> Section 11.36(1)(a) of Chapter PI 11 (Children with Disabilities) of the Wisconsin Administrative Code, effective July 2001.

- <sup>195</sup> Section 115.76(b) of the Wisconsin Statutes Annotated. State regulations define "significant *developmental delay*" for children, ages 3, 4 and 5 years of age or below compulsory school attendance age, to be: "significant delays in the areas of physical, cognition, communication, social-emotional or adaptive development." Section 11.36(11)(a) of Chapter PI 11 of the Wisconsin Administrative Code.
- <sup>196</sup> Sections 502 and 501 of Title 21, Chapter 1 (Wyoming Education Code of 1969) of the 2001 Wyoming Statutes.
- <sup>197</sup> Section 3(h) of Chapter 7 of the Rules Governing Services for Children with Disabilities of the Wyoming Department of Education, last amended in 2000.
- <sup>198</sup> Section 6(h) of Chapter 7 of the Rules Governing Services for Children with Disabilities of the Wyoming Department of Education.
- <sup>199</sup> Section 6(d) of Chapter 7 of the Rules Governing Services for Children with Disabilities of the Wyoming Department of Education. "*Developmental disability* is a category available to children ages three until the child enrolls in a public school program, who do not qualify in other categories, but meet the *developmental disability* criteria."

## 2 Notes on General Assistance Laws and Regulations

A *General Assistance (GA)* program is a cash and in-kind assistance program that: (1) is financed and administered entirely by the state, county, or locality in which it operates; (2) is designed to meet the short-term or ongoing needs of low-income persons ineligible for (or awaiting approval for) federally funded cash assistance;<sup>1</sup> and (3) provides assistance for at least two consecutive months.<sup>2</sup> While this definition includes interim *assistance*,<sup>3</sup> it does not include state-segregated or state-separate TAN F programs.<sup>4</sup> Sixteen states have no statewide General Assistance programs.<sup>5</sup> Thirty-four states and the District of Columbia have state General Assistance programs in which the state government has at least some involvement: Alaska, Arizona, California, Colorado,<sup>6</sup> Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska,<sup>7</sup> Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, Washington, and Wisconsin.<sup>8</sup> Most of these states provide assistance to disabled, elderly, or otherwise unemployable individuals not eligible for (or awaiting approval for) SSI or SSDI benefits.

### Alaska

Alaska operates two statewide general assistance programs for financially needy persons not receiving federal assistance: **General Relief Assistance and Interim Assistance**. The General Relief Assistance program primarily serves single adults without children and is open to financially needy persons who do not qualify for federally funded cash assistance programs. Elderly, blind, or disabled persons over age 18 persons awaiting SSI or SSDI determination are eligible for the Interim Assistance program?<sup>9</sup>

### Arizona

Arizona operates a statewide General Assistance program for financially needy persons (individuals and couples) not receiving federal assistance including persons who are at least 18 years old and who have been disabled for at least 12 months, caretakers of disabled individuals living in the home, and married couples if both meet the eligibility criteria (e.g., both are disabled) and have no children.<sup>10</sup>

### California

California law requires each of its counties to provide General Relief assistance to financially needy persons not receiving federal assistance. This program primarily serves non-disabled adults without dependents. The state supervises the county programs and maintains policy control, decides program scope, and sets minimum benefit levels.

### Colorado

Colorado operates a statewide Aid to the Needy Disabled program for persons between the ages of 18 and 59 who are waiting to become eligible for SSI or SSDI and who have been disabled<sup>11</sup> at least six months as determined by a doctor."<sup>12</sup>

### Connecticut

Connecticut operates a State Administered General Assistance program statewide that provides cash and medical assistance for financially needy persons not receiving federal assistance. In order to qualify for cash benefits under this program, individuals must qualify as Unemployable, Short-Term Transitional or Long-Term Transitional. To qualify as "unemployable," an individual must have a physical and/or mental impairment (or combination or impairments) that will prevent employment for six months or more.<sup>13</sup> Individuals with long-term impairment are persons with a severe physical or mental impairment that will prevent employment for at least six months. Individuals with short-term impairments are persons with a physical or mental impairment that will prevent employment for two to six months.<sup>14</sup>

### Delaware

Delaware operates a General Assistance program statewide for families and unemployable individuals who are ineligible for TANF, SSI or SSDI assistance."<sup>15</sup> Unemployable adults" (temporarily or permanently disabled) include those applying for and appealing SSI and SSDI eligibility determinations.

### **District of Columbia**

The District of Columbia operates a program of General Public Assistance for Children, which is limited to financially needy children not receiving federal assistance. A general assistance program serving disabled adults awaiting SSI determinations was eliminated in May 1997.

### **Hawaii**

Hawaii operates a statewide General Assistance program for financially needy persons not receiving federal assistance,<sup>16</sup> including single persons or couples between the ages of 18 and 65 who have a disability that precludes gainful employment for at least 60 days."

### **Idaho**

Idaho law requires that all counties operate a General Assistance program to provide for the necessities of life and necessary medical services primarily for the poor. Eligibility standards vary across the state;<sup>18</sup> Ada County's program serves disabled persons awaiting SSI eligibility determinations.

### **Illinois**

Illinois law requires all units of local government to have a Transitional Assistance program.<sup>19</sup> Persons with a disability are eligible to receive benefits if they have applied for SSI, are awaiting a final decision on SSI eligibility and has been determined disabled by the state using the SSI standard, and are ineligible for other public assistance.<sup>20</sup> Persons who are unemployable as a result of a temporary disability and are ineligible for federal cash assistance programs are also eligible for transitional assistance.<sup>21</sup>

### **Indiana**

Indiana law requires all townships to provide a Poor Relief program for persons in need but makes no reference to persons with disabilities. The benefit schedule and eligibility rules vary across the state.<sup>22</sup>

### **Iowa**

Iowa law requires each county to operate a General Assistance program for financially needy persons not receiving federal assistance but makes no reference to persons with disabilities. The program design, benefit schedule, and eligibility rules are determined by each county and vary across the state.<sup>23</sup>

### **Kansas**

Kansas operates a statewide General Assistance program for financially needy persons not receiving federal assistance, including persons with disabilities awaiting SSI determination and caretakers of disabled persons<sup>24</sup>

### **Maine**

Maine operates a statewide General Assistance program for all categories of financially needy people; no specific reference is made to the eligibility of persons with disabilities.<sup>25</sup>

### **Maryland**

Maryland operates a statewide Transitional Emergency Medical and Housing Assistance program for financially needy persons not receiving federal assistance, including persons with a medical disability that precludes employment for at least 3 months who are awaiting SSI determination.<sup>26</sup>

### **Massachusetts**

Massachusetts operates a statewide Emergency Aid to the Elderly, Disabled, and Children program for financially needy persons who are not receiving federal assistance, including persons disabled at least 60 days who are ineligible for SSI or awaiting SSI determination.<sup>27</sup>

### **Michigan**

Michigan operates a statewide State Disability Assistance program for financially needy disabled persons, including persons who are disabled and receiving SSI, awaiting SSI determination, or temporarily disabled for at least 90 days. Special education students under age 26 and caretakers of disabled persons are also eligible.<sup>28</sup>

### **Minnesota**

Minnesota operates a statewide General Assistance program for financially needy persons not receiving federal assistance,<sup>29</sup> including persons diagnosed by a qualified professional as "*mentally* retarded" whose condition prevents them from obtaining or retaining employment.<sup>30</sup> Other eligible individuals include persons with an application pending for (or appealing termination of) SSI or SSDI benefits, and persons living in a licensed or certified facility for purposes of physical or mental health or rehabilitation.<sup>31</sup>

### **Mississippi**

Mississippi provides State Financial Assistance to a child who cannot pursue all regular class work due to reasons of ...*mental* retardation... has not finished or graduated from high school, and who is in attendance in a private school, parochial school or speech, hearing and/or language clinic.<sup>32</sup>

### **Missouri**

Missouri operates a statewide General Relief program for financially needy persons not receiving federal assistance, including persons with a temporary disability lasting at least 90 days, persons with a permanent disability awaiting SSI determination, and caretakers of disabled persons.<sup>33</sup>

### **Nebraska**

Nebraska operates a statewide State Disability Program for financially needy persons, ages 21-64 ,with disabilities lasting at least six months, including those awaiting SSI determination.<sup>34</sup>

### **Nevada**

Nevada law requires all counties to provide Direct Assistance Services for financially needy persons not receiving federal assistance, but makes no reference to persons with disabilities.<sup>35</sup>

### **New Hampshire**

New Hampshire operates a statewide City Welfare program for financially needy persons not receiving federal cash assistance, but makes no reference to persons with disabilities.<sup>36</sup>

### **New Jersey**

New Jersey operates a statewide Work First New Jersey/General Assistance program for financially needy persons not receiving federal assistance, including persons at least 18 years old who are unemployable, disabled (temporarily and permanently) and not receiving federal cash assistance (e.g., persons awaiting SSI determination).<sup>37</sup>

### **New Mexico**

New Mexico operates a statewide General Assistance program for financially needy persons not receiving federal assistance, including persons with both a temporary disability lasting at least 30 days and persons with a permanent disability.<sup>38</sup>

### **New York**

New York operates a statewide Safety Net Assistance program for financially needy persons not receiving federal assistance, including persons with a disability awaiting SSI determination.<sup>39</sup>

### **Ohio**

Ohio operates a statewide Disability Assistance program intended to meet the basic needs of needy persons not receiving federal assistance, including persons who are disabled and have been disabled for at least nine months.<sup>40</sup>

### **Oregon**

Oregon operates two statewide programs for financially needy persons who are ineligible for federal assistance. Persons aged 18-64 who are disabled for at least 12 months and awaiting SSI determination, and persons with a disability needing long-term care services are eligible for General Assistance.<sup>41</sup> Disabled persons ages 18 or older who are ineligible for SSI because of their alien status are eligible for Temporary Assistance.

### **Pennsylvania**

Pennsylvania operates a statewide General Assistance program for financially needy persons not receiving federal assistance, including persons with a temporary or permanent disability that precludes any gainful employment.<sup>42</sup>

### **Rhode Island**

Rhode Island operates a statewide General Public Assistance - Bridge Fund program for financially needy disabled persons not receiving federal assistance, including both persons with permanent disabilities awaiting SSI determination and persons with a temporary disability (lasting at least 30 days). Persons in the latter group may receive cash "hardship" assistance grants for one to two months.<sup>43</sup>

### **South Dakota**

South Dakota law requires all counties to pay for indigent hospital care and to provide a Poor Relief program for the poor and indigent, but makes no reference to persons with disabilities. The benefit schedule and eligibility rules are determined by the counties and vary across the state.<sup>44</sup>

### **Utah**

Utah operates a statewide General Assistance-Self Sufficiency Program that provides assistance to meet the special non-recurrent needs of persons who face barriers to employment for at least 30 days (as determined by a medical exam), including persons with disabilities who are applicants for SSI benefits.<sup>45</sup>

### **Vermont**

Vermont operates a statewide General Assistance program that grants financial aid to financially needy persons not receiving federal assistance, including persons disabled for at least 30 days.<sup>46</sup>

### **Virginia**

Virginia has established an optional General Relief program under which localities may choose to provide that make s no explicit reference to persons with disabilities<sup>47</sup> In Fairfax County, persons awaiting SSI determination and persons unemployable for at least 30 days due to disability are eligible for General Relief benefits.

### **Washington**

Washington operates a statewide General Assistance program for persons who are "incapacitated from gainful employment by reason of bodily or mental infirmity that will likely continue for a minimum of ninety days....," including "recipients of supplemental security income whose need ...is not met by such supplemental security income grant because of separation from a spouse..."<sup>48</sup>

### **Wisconsin**

Wisconsin operates an optional Relief Block Grant Program that provides state funds to eligible counties for General Relief programs. The benefit schedule and eligibility rules are determined by the counties and vary across the state.<sup>49</sup> In Dane County (Milwaukee), persons who are unemployable due to a temporary or permanent disability are eligible for General Relief.

Notes

<sup>1</sup> The population eligible for general assistance varies considerably by state, but usually consists of those individuals ineligible or not yet qualified for SSI (e.g., an able-bodied individual or an individual with a disability not severe enough to qualify for SSI) and/or families and children categorically ineligible for

TANE (e.g., a child living with an unrelated caretaker). A few states do provide General Assistance to all persons categorically ineligible for SSI or TANF

In order to distinguish General Assistance programs from emergency assistance programs.

Interim assistance is financial assistance for persons waiting to become eligible for SSI or Social Security Disability Insurance (SSDI).

Gallager, L. J., Uccello, C., Pierce, A., & Reidy, E. (1999). State General Assistance Programs: 1998. Washington, DC: The Urban Institute.

Six states have at least one county that has chosen to provide General Assistance without state involvement: Florida, Georgia, Kentucky, Montana, North Carolina and North Dakota. The remaining ten states have neither a state GA program or a local GA program: Alabama, Arkansas, Louisiana, Mississippi, Oklahoma, South Carolina, Tennessee, Texas, West Virginia, and Wyoming.

Colorado has a statewide uniform General Assistance program for disabled persons but no other requirements for a GA program.

Nebraska has a uniform state GA program for disabled individuals and also requires counties to provide General Assistance to needy residents not covered by the state GA program.

Twenty-four of these states have statewide General Assistance programs with uniform eligibility rules; nine do not have uniform state GA programs, but require all counties to provide General Assistance. The two remaining states, Wisconsin and Virginia, do not provide statewide assistance, but do provide supervision and funding for counties that choose to have a program.

Section 47.25.455 (a) of the Alaska Statutes provides: "The department shall pay at least \$280 a month to a person eligible for assistance under this chapter while the eligibility of the person for benefits under 42 U.S.C.1381 -1385 (Title XVI, Social Security Act, Supplemental Security Income Program,) is being determined."

Section 46-233(A) of the Arizona Revised Statutes provides: "A person is eligible for general assistance only for a total of twelve months out of each thirty-six consecutive month period unless the person is designated and remains eligible as an adult caretaker, in which case the person is eligible for general assistance for an indefinite period, as determined by the department ... No person shall be entitled to general assistance who does not meet and maintain the following requirements: ... 7. Has a disability that is certified to last twelve months or longer according to the findings of the state department and has applied for federal disability benefits, except that this paragraph does not apply to adult caretakers of a disabled dependent person.

Section 26-2-103 (6)(a) of the Colorado Revised Statutes defines "total disability" to be "a physical or mental impairment which is disabling and which, because of other factors such as age, training, experience, and social setting, substantially precludes the person having such disability from engaging in a useful occupation as a homemaker or as a wage earner in any employment which exists in the community for which he has competence."

Section 26-2-106 of the Colorado Revised Statutes.

The medical impairment criteria are identical to those used in the SSI and Medicaid programs, adjusted for duration and severity. Individuals may also qualify as unemployable because they: (1) are under age 16; (2) are over age 65; (3) are over age 55 and have no work history in the previous 5 years; (4) are a full-time high school student; (5) are needed in the home to care for an incapacitated spouse or child; (6) are needed in the home to care for a child under age 2; or, (7) are pending receipt of a state or federal means tested program.

These individuals must have a recent work history (i.e., earned at least \$500 in each of 3 of the last 5 calendar quarters) or have been eligible to collect Unemployment Compensation during the previous six months.

- 15 Sections 501-503 of the Delaware Code.
- 16 Section 346-71 of the 2000 Hawaii Revised Statutes.
- 17 Section 346-71 (b) of the 2000 Hawaii Revised Statutes. A person between eighteen and sixty-five years of age with a disability shall be eligible for general assistance to households without minor dependents if the person: (1) Is determined to be needy; (2) Is unable to meet the disability requirements established by the federal Supplemental Security Income Program; and (3) Is unable to engage in any substantial gainful employment. A determination and certification of mental disability shall be made by a board of licensed psychologists or licensed physicians whose specialty is in psychiatry.
- 18 Section 56-206 of the Idaho Code.
- 19 Illinois also has a separate general assistance program targeted on poor children and families. The City of Chicago and all other local units that receive state funds (approximately 60 localities) must follow the benefit schedule and eligibility rules established by the state. The remaining localities, which do not receive state funds (approximately 1,400 localities), establish their standards and policies locally. The state sets the benefit schedule and eligibility rules for the localities that receive state funds.
- 20 Section 6-1(c)(2) of Act 5 of Chapter 305 of the Illinois Compiled Statutes.
- 21 Section 6-1 of Act 5 of Chapter 305 of the Illinois Compiled Statutes.
- 22 Chapter 25 of Title 12, Article 20 of the Indiana Code.
- 23 Section 252.25 of the Iowa Code 2001.
- 24 Section 702 of Chapter 39 of the Kansas Statutes.
- 25 Section 4305 of Title 22 of the Maine Revised Statutes.
- 26 Section 901 of Title 3 of the Maryland Statutes 2000.
- 27 Section 1 of Chapter 117A of the General Laws of Massachusetts.
- 28 Section 43 of Chapter 400 of the Michigan Compiled Laws.
- 29 Chapter 256D of the Minnesota Statutes 2000.
- 30 Section 5(1)(a)(5) of Chapter 256D of the Minnesota Statutes 2000.
- 31 Section 5(1)(a)(3), (6) of Chapter 256D of the Minnesota Statutes 2000.
- 32 Section 63 of Title 37, Chapter 23 of the Mississippi Laws.
- 33 Chapter 208 of Title XII of the Missouri Revised Statutes.
- 34 Section 1005 of Chapter 68 of the Nebraska Revised Statutes. Nebraska also requires that counties provide General Assistance to meet the needs of persons not eligible for other assistance programs and eligibility rules vary across the state. Section 133 of Chapter 68 of the Nebraska Revised Statutes.
- 35 Chapter 428 of the Nevada Revised Statutes.
- 36 Chapter 185 of Title XII of the New Hampshire Revised Statutes Annotated. The benefit schedule and eligibility rules vary across the state.
- 37 Section 58 of Title 44, Article 10 of the New Jersey Permanent Statutes.
- 38 Section 7 of Title 27, Article 2 of the New Mexico Statutes Annotated. Persons are over the age of eighteen and are disabled, according to rules of the state department, and are not receiving cash assistance or services pursuant to the New Mexico Works Act.
- 39 Section 62 of Chapter 55, Article 2A, Title 2 of the New York State Consolidated Laws.

- 40 Section 5115.01 of the Ohio Revised Code. A person who is "unable to do any substantial or gainful  
activity by reason of a medically determinable physical or mental impairment that can be expected to  
result in death or has lasted or can be expected to last for not less than nine months."
- 41 Section 710 of Chapter 411 of the Oregon Revised Statutes.
- 42 Section 432(3)(c) of Title 62 of Purdon's Pennsylvania Statutes Annotated, and Section 145.61 of the  
Pennsylvania Code. "General Assistance is intended to be made available for chronically or  
transitionally needy persons provided that the persons meet the established eligibility requirements as  
provided in this chapter and in accordance with Chapter 141-and other provisions of this title."
- 43 Chapter 40-6 of the General Laws of Rhode Island.
- 44 Chapter 28-13A of the South Dakota Codified Laws.
- 45 Section 401 (d)(I) of Chapter 3 of the Utah Workforce Services Code.
- 46 Sections 2104 and 2101(4) of Title 33, Chapter 21 of the Vermont Statutes.
- 47 Section 87 of Title 63.1, Chapter 6 of the Code of Virginia.
- 48 Section 5(6)(a) of Title 74, Chapter 74-04 of the Revised Code of Washington.
- 49 Sections 49.015 and 49.02 of the Wisconsin Statutes Annotated.

### 3. Notes on Involuntary Termination of Parental Rights

**Alabama**: Alabama law includes “*mental deficiency* ...of the parent .. as a factor to be considered” by a court in determining whether to order an involuntary termination of parental rights <sup>1</sup>

**Alaska**: Alaska law permits such an involuntary termination of parental rights based on a finding that a “parent or guardian...has a mental illness or *mental deficiency* of such nature and duration that ... the parent or guardian will be incapable of caring for the child without placing the child at substantial risk of physical or mental injury....”<sup>2</sup>

**Arizona**: Arizona law authorizes an involuntary termination of parental rights if a court finds that a “parent is unable to discharge the parental responsibilities because of...*mental deficiency*...”<sup>3</sup>

**Arkansas**: Arkansas law authorizes the involuntary termination of parental rights where “*mental deficiencies*” are found to be a reason for the inability or incapacity of a parent to remedy the subsequent issues or factors or rehabilitate the parent's circumstances which prevent return of the juvenile to the family home.<sup>4</sup>

**California**: California authorizes the involuntary termination of parental rights where a child has or is likely to suffer “serious physical harm or illness as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child due to the parent's or guardian's...*developmental disability*...”<sup>5</sup>

**Colorado**: Colorado law authorizes the involuntary termination of parental rights upon a finding that “there is clear and convincing evidence of...*mental deficiency* of the parent of such duration or nature as to render the parent unlikely, within a reasonable period of time, to care for the ongoing physical, mental, and emotional needs of the child.”<sup>6</sup>

**Connecticut**: Connecticut law makes no explicit reference to the disability or *mental retardation* of a parent as a ground for the involuntary termination of parental rights.

**Delaware**: Delaware law establishes as a ground for the involuntary termination of parental rights, the fact that the parent is “mentally incompetent,”<sup>7</sup> “and defines that term to mean: “the inability to discharge parental responsibilities by reason of ...*mental retardation or mental deficiency*.”<sup>8</sup>

**District of Columbia**: District of Columbia law makes no explicit reference to the disability or *mental retardation* of a parent as a ground for the involuntary termination of parental rights.

**Florida**: Florida law establishes as a ground the involuntary termination of parental rights that: “...a parent...has been judicially declared incapacitated with restoration of competency found to be medically improbable.”<sup>9</sup>

**Georgia**: Georgia law establishes as a ground for the involuntary termination of parental rights: “a medically verifiable deficiency of the parent's physical, mental, or emotional health of such duration or nature as to render

the parent unable to provide adequately for the physical, mental, emotional, or moral condition and needs of the child.”<sup>10</sup>

**Hawaii:** Hawaii law permits the involuntary termination of parental rights upon a finding that a parent is “*mentally retarded* and incapacitated from giving consent to the adoption of or from providing now and in the foreseeable future the care necessary for the well-being of the child.”<sup>11</sup>

**Idaho:** Idaho law establishes as a condition for the involuntary termination of parental rights a finding by the court that a parent “is unable to discharge parental responsibilities because of...*mental deficiency*,....”<sup>12</sup>

**Illinois:** Illinois law defines an “unfit person” in the context of the involuntary termination of parental rights, and establishes grounds of “unfitness” that include “inability to discharge parental responsibilities supported by competent evidence...of...*mental retardation*...or *developmental disability*....”<sup>13</sup> In this context, “*mental retardation*” is defined as “significantly sub-average general intellectual functioning which exists concurrently with impairment in adaptive behavior and which originates before the age of 18 years.”<sup>14</sup> “*Developmental disability*” is defined as “a disability which is attributable to:...mental retardation... or...any other condition which results in impairment similar to that caused by mental retardation and which requires services similar to those required by mentally retarded persons.”<sup>15</sup>

**Indiana:** Indiana law makes no explicit reference to the disability or *mental retardation* of a parent as a ground for the involuntary termination of parental rights.

**Iowa:** Iowa authorizes the involuntary termination of parental rights where the parent’s “mental capacity or condition ... results in the child not receiving adequate care.”<sup>16</sup>

**Kansas:** Kansas law authorizes the involuntary termination of parental rights, based, in part, on a determination of whether “a *mental deficiency* of the parent, of such duration or nature as to render the parent unlikely to care for the ongoing physical, mental and emotional needs of the child.”<sup>17</sup>

**Kentucky:** Kentucky law identifies “*mental retardation*” of the parent as a basis for the involuntary termination of parental rights,<sup>18</sup> and defines the term “mentally retarded person” to be: “a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.”<sup>19</sup>

**Louisiana:** Louisiana law authorizes the involuntary termination of parental rights where the lack of any reasonable expectation of significant improvement in the parental mis– conduct in the near future may be evidenced by...*mental deficiency*...that renders the parent unable or incapable of exercising parental responsibilities without exposing the child to a substantial risk of serious harm.”<sup>20</sup> In this context, “*mental deficiency*” is defined as: “significantly subaverage intellectual functioning existing concurrently with deficits in

adaptive behavior, as determined by a psychiatrist or psychologist and manifested during the developmental period.”<sup>21</sup>

**Maine**: Maine law makes no explicit reference to the disability or *mental retardation* of a parent as a ground for the involuntary termination of parental rights.

**Maryland**: Maryland law makes no explicit reference to the disability or *mental retardation* of a parent as a ground for the involuntary termination of parental rights.

**Massachusetts**: Massachusetts law makes no explicit reference to the disability or *mental retardation* of a parent as a ground for the involuntary termination of parental rights.

**Michigan**: Michigan law makes no explicit reference to the disability or *mental retardation* of a parent as a ground for the involuntary termination of parental rights.

**Minnesota**: Minnesota law makes no explicit reference to the disability or *mental retardation* of a parent as a ground for the involuntary termination of parental rights.

**Mississippi**: Mississippi law establishes as a ground for the involuntary termination of parental rights: “the parent exhibits ongoing behavior which would make it impossible to return the child to the parent's care and custody because the parent has a diagnosable condition unlikely to change within a reasonable time such as... severe *mental deficiencies*, which condition makes the parent unable to assume minimally, acceptable care of the child.”<sup>22</sup>

**Missouri**: Missouri law authorizes a court in the context of the involuntary termination of parental rights to “consider and make findings” on the “mental condition which is shown by competent evidence either to be permanent or such that there is no reasonable likelihood that the condition can be reversed and which renders the parent unable to knowingly provide the child the necessary care, custody and control.”<sup>23</sup>

**Montana**: Montana law makes no explicit reference to the disability or *mental retardation* of a parent as a ground for the involuntary termination of parental rights.

**Nebraska**: Nebraska law authorizes the involuntary termination of parental rights where “the parents are unable to discharge parental responsibilities because of...*mental deficiency* and there are reasonable grounds to believe that such condition will continue for a prolonged indeterminate period.”<sup>24</sup> Similarly, Nebraska law provides that a court may terminate the rights of one or both parents under a child custody decree and parenting plan if “one parent is or both parents are unable to discharge parental responsibilities because of...*mental deficiency*...”<sup>25</sup>

**Nevada**: Nevada law permits its courts to consider in the context of the involuntary termination of parental rights: “...*mental deficiency* of the parent which renders the parent consistently unable to care for the immediate

and continuing physical or psychological needs of the child for extended periods of time” as a condition “which may diminish suitability as a parent.”<sup>26</sup>

**New Hampshire**: New Hampshire law establishes as a ground for the involuntary termination of parental rights a determination that “because of *mental deficiency*..., the parent is and will continue to be incapable of giving the child proper parental care and protection for a longer period of time than would be wise or prudent to leave the child in an unstable or impermanent environment.”<sup>27</sup>

**New Jersey**: New Jersey law makes no explicit reference to the disability or *mental retardation* of a parent as a ground for the involuntary termination of parental rights.

**New Mexico**: New Mexico law makes no explicit reference to the disability or *mental retardation* of a parent as a ground for the involuntary termination of parental rights.

**New York**: New York law makes no explicit reference to the disability or *mental retardation* of a parent as a ground for the involuntary termination of parental rights.

**North Carolina**: North Carolina law makes no explicit reference to the disability or *mental retardation* of a parent as a ground for the involuntary termination of parental rights.

**North Dakota**: North Dakota law provides that parental rights may be terminated by a court on the ground that “by reason of physical or *mental incapacity* the parent is unable to provide necessary parental care for the minor.”<sup>28</sup>

**Ohio**: Ohio law makes no explicit reference to the disability or *mental retardation* of a parent as a ground for the involuntary termination of parental rights.

**Oklahoma**: Oklahoma law authorizes the involuntary termination of parental rights where: “the parent whose rights are sought to be terminated has a...*mental deficiency*...which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities.”<sup>29</sup>

**Oregon**: Oregon law authorizes the involuntary termination of parental rights upon a finding of parental unfitness and provides that in making such a determination the court “shall consider...*mental deficiency* of the parent of such nature and duration as to render the parent incapable of providing proper care for the child for extended periods of time.”<sup>30</sup>

**Pennsylvania**: Pennsylvania law makes no explicit reference to the disability or *mental retardation* of a parent as a ground for the involuntary termination of parental rights.

**Rhode Island**: Rhode Island law makes no explicit reference to the disability or *mental retardation* of a parent as a ground for the involuntary termination of parental rights.

**South Carolina**: South Carolina law authorizes the involuntary termination of parental rights upon a finding that “the parent has a diagnosable condition unlikely to change within a reasonable time including, but not limited to...*mental deficiency* ...and the condition makes the parent unlikely to provide minimally acceptable care of the child.”<sup>31</sup>

**South Dakota**: South Dakota law makes no explicit reference to the disability or *mental retardation* of a parent as a ground for the involuntary termination of parental rights.

**Tennessee**: Tennessee law authorizes the involuntary termination of parental rights on the grounds that “the parent or guardian of the child is incompetent to adequately provide for the further care and supervision of the child because the parent's or guardian's mental condition is presently so impaired and is so likely to remain so that it is unlikely that the parent or guardian will be able to assume or resume the care of and responsibility for the child in the near future.”<sup>32</sup>

**Texas**: Texas law provides for the involuntary termination of parental rights “if the court finds that...the parent has a...*mental deficiency* that renders the parent unable to provide for the physical, emotional, and mental needs of the child....”<sup>33</sup>

**Utah**: Utah law provides that in the context of the involuntary termination of parental rights, in determining whether a parent or parents are unfit or have neglected a child, the court shall consider...*mental deficiency* of the parent that renders him unable to care for the immediate and continuing physical or emotional needs of the child for extended periods of time.”<sup>34</sup>

**Vermont**: Vermont law makes no explicit reference to the disability or *mental retardation* of a parent as a ground for the involuntary termination of parental rights.

**Virginia**: Virginia authorizes the involuntary termination of parental rights based on a finding that it is not reasonably likely that the conditions which resulted in the neglect or abuse of a child can be substantially corrected or eliminated so as to allow the child's safe return to his parent or parents within a reasonable period of time.” In making such a finding, proof that “the parent or parents are suffering from a...*mental deficiency* of such severity that there is no reasonable expectation that such parent will be able to undertake responsibility for the care needed by the child in accordance with his age and stage of development” constitutes prima facie evidence” of such a conclusion.<sup>35</sup>

**Washington**: Washington law authorizes the involuntary termination of parental rights where a child has been removed from the custody of the parent pursuant to a finding of dependency and “there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future because the “psychological incapacity or *mental deficiency* of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time.”<sup>36</sup> Washington law, however,

generally provides that “no parent or guardian may be deemed abusive or neglectful solely by reason of the parent's or child's ...*develop-mental disability*...”<sup>37</sup>

**West Virginia**: West Virginia law provides for the involuntary termination of parental rights if a court finds that there is "no reasonable likelihood that conditions of neglect or abuse can be substantially corrected." State law provides that a court may conclude that the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect, on their own if the abusing parent or parents have incurred...*mental deficiency* of such duration or nature as to render such parent or parents incapable of exercising proper parenting skills or sufficiently improving the adequacy of such skills.<sup>38</sup>

**Wisconsin**: Wisconsin law authorizes the involuntary termination of parental rights if a court determines that a parent has a “continuing parental disability,” as evidenced by confinement in an institution for persons with “*developmental disabilities*.”<sup>39</sup>

**Wyoming**: Wyoming law makes no explicit reference to the disability or *mental retardation* of a parent as a ground for the involuntary termination of parental rights.

## Notes

<sup>1</sup> Section 26-18-7 of the Code of Alabama, last amended in 1984.

<sup>2</sup> Section 47.10.086(c)(5) of the Alaska State Statutes.

<sup>3</sup> Section 8-863 of the Arizona Revised Statutes.

<sup>4</sup> Section 9-27-341(b)(3)(B)(vii)(a) of the Arkansas Code.

<sup>5</sup> Section 300 of the California Welfare and Institutions Code.

<sup>6</sup> Section 19-5-105 of the Colorado Revised Statutes.

<sup>7</sup> Section 1103(a) of the Delaware Code.

<sup>8</sup> Section 1101(9) of the Delaware Code.

<sup>9</sup> Section 63.089(3)(e) of the 2001 Florida Statutes.

<sup>10</sup> Section 15-11-94 of the Georgia Code.

<sup>11</sup> Section 571-61(b)(F) of the 2000 Hawaii Revised Statutes.

<sup>12</sup> Section 6-2005(d) of the Idaho Code.

<sup>13</sup> Section 1D of Act 50 of Chapter 750 of the Illinois Compiled Statutes.

<sup>14</sup> Section 1-116 of Act 5 of Chapter 405 of the Illinois Compiled Statutes.

<sup>15</sup> Section 1-106 of Act 5 of Chapter 405 of the Illinois Compiled Statutes.

<sup>16</sup> Section 232.2(6)(n) of the Iowa Code 2001.

<sup>17</sup> Section 1583a(b)(1) of Chapter 38 of the Kansas Statutes.

<sup>18</sup> Section 127(6) of Chapter 610, Section 23(a) of Chapter 620, and Section 90(a) of Chapter 625 of the Kentucky Revised Statutes.

<sup>19</sup> Section 10(9) of Chapter 202B of the Kentucky Revised Code.

<sup>20</sup> Article 1036(1) of the Louisiana Children’s Code.

- 21 Article1003(8) of the Louisiana Children’s Code.
- 22 Section 103(e)(i) of Title 93, Chapter 15 of the Mississippi Laws.
- 23 Section 447(3) of Title XII, Chapter 211 of the Missouri Revised Statutes.
- 24 Section 292(5) of Chapter 43 of the Nebraska Revised Statutes.
- 25 Section 364 of Chapter 42 of the Nebraska Revised Statutes.
- 26 Section 106(1) of Chapter 128 of the Nevada Revised Statutes.
- 27 Section 5(IV) of Title XVII of Chapter 170-C of the New Hampshire Revised Statutes Annotated.
- 28 Section 14-15-19(3) of the North Dakota Century Code.
- 29 Section 10-7006-1.1(A)(13)(c) of the Oklahoma Statutes. Section 10-7505-4.2(L)(1) of the Oklahoma Statutes provides that consent to adoption is not required from “a parent who has a...mental deficiency... which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities.
- 30 Section 504(1) of Chapter 419b of the Oregon Revised Statutes.
- 31 Section 1572(6) of Title 20, Chapter 7 of the South Carolina Code of Laws.
- 32 Section 113(g)(8)(B)(i) of Title 36, Chapter 1 of the Tennessee Code.
- 33 Section 3(a) of Chapter 161 of the Texas Family Code.
- 34 Section 408(2) of Chapter 3a of the Utah Judicial Code.
- 35 Section 283 of Title 16.1, Chapter 11 of the Code of Virginia.
- 36 Section 180(e) of Title 13, Chapter 13-34 of the Revised Code of Washington.
- 37 Section 15(3) of Title 26, Chapter 26-44 of the Revised Code of Washington.
- 38 Section 5(7)(b)(6) of Chapter 49, Article 6 of the West Virginia Code.
- Section 48.415(1)(c) of the Wisconsin Statutes Annotated.

#### 4.: Notes on Legal Competence or Capacity

**Alabama:** Alabama law authorizes the appointment of guardians for *developmentally disabled* persons, “and defines such a person to be:

*a person whose impairment of general intellectual functioning or adaptive behavior meets the following criteria: ... (3) It is attributed to one or more of the following: a. Mental retardation...; b. Any other condition of a person found to be closely related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded...<sup>1</sup>*

Alabama law also provides for the appointment of corporations as guardians for *develop-mentally disabled* persons, and in this context defines such a person to be: “a person whose impairment of general intellectual functioning or adaptive behavior which is manifested before the person attains the age of 22 and results in *mental retardation... as defined in the DD Act.*”<sup>2</sup> Alabama law empowers county probate courts to protect mentally retarded individuals...<sup>3</sup> and provides for protective proceedings if the court determines that a person is “unable to manage property and business affairs effectively for such reasons as mental illness, *mental deficiency*, physical illness or disability, physical or mental infirmities accompanying advanced age ...”<sup>4</sup>

**Alaska:** Alaska law authorizes the appointment of a conservator for a person determined by a court to be “unable to manage the person's property and affairs effectively for reasons such as ... *mental deficiency.*”<sup>5</sup> Similarly, with respect to powers of attorney, Alaska law provides that disability be established by affidavit stating that the individual’s ability to receive and evaluate information, or to communicate decisions, is impaired as a result of *mental deficiency.*”<sup>6</sup>

**Arizona:** Arizona law authorizes the appointment of a conservator or the issuance of a protective order for an “incapacitated person,” and defines such a person to be: “any person who is impaired by reason of ... *mental deficiency... to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.*”<sup>7</sup>

**Arkansas:** Arkansas law authorizes the appointment of a guardian for an “incapacitated person,” and defines such a person to be: “a person who is impaired by reason of a disability such as ...*mental deficiency... to the extent of lacking sufficient understanding or capacity to make or communicate decisions to meet the essential requirements for his health or safety or to manage his estate.*”<sup>8</sup>

**California:** California law authorizes the appointment of a guardian or conservator for a person with a “*developmental disability,*” and defines that term to mean: “a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial handicap for such individual. ... this term includes *mental retardation... his term also includes handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals ....*”<sup>9</sup>

**Colorado:** Colorado law authorizes the appointment of a guardian or conservator for an “incapacitated” person, and defines that term to mean: lacking “the ability to manage property and business affairs effectively by reason of...*mental deficiency, ... or other disabling cause.*”<sup>10</sup>

**Connecticut:** Connecticut law authorizes the appointment of a plenary guardian for an individual found by a court to be: “by reason of the severity of his *mental retardation,* totally unable to meet essential requirements for his physical health or safety<sup>11</sup> and totally unable to make informed decisions about matters related to his care,”<sup>12</sup> and defines “*mental retardation*” to be: “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.”<sup>13</sup>

**Delaware:** Delaware law authorizes the appointment of a guardian for a “disabled resident,” including “a person who by reason of *mental or physical incapacity* is unable properly to manage or care for their own person or property, or both.”<sup>14</sup> In this context, state law defines “*mental or physical incapacity*” to be “any physical or mental disability and shall include ...*mental retardation ....*”<sup>15</sup> Delaware law also confers a right on

“*mentally retarded* persons” to have a qualified guardian when that is required to protect personal well-being and interests.<sup>16</sup>

**District of Columbia:** District of Columbia law authorizes the appointment of a conservator<sup>17</sup> or guardian<sup>18</sup> for an “incapacitated individual,” and defines that term to mean:

*an adult whose ability to receive and evaluate information effectively or to communicate decisions is impaired to such an extent that he or she lacks the capacity to manage all or some of his or her financial resources or to meet all or some essential requirements for his or her physical health, safety, habilitation, or therapeutic needs without court-ordered assistance or the appointment of a guardian or conservator.*<sup>19</sup>

State law expressly provides that such an incapacity may arise from *mental retardation*.<sup>20</sup>

**Florida:** Florida law authorizes the appointment of a guardian for a person found to be *mentally incompetent*, and defines such a person to include: “one who, because of ... *mental retardation* ... is incapable of either managing his or her property or caring for himself or herself, or both.”<sup>21</sup>

**Georgia:** Georgia law authorizes the appointment of guardians for “adults who are incapacitated by reason of...*mental retardation*...”<sup>22</sup>

**Hawaii:** Hawaii law authorizes the appointment of a guardian of the person for an “incapacitated person” and defines that term to mean: “any person who is impaired by reason of... *mental deficiency*... to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning one's person.”<sup>23</sup> Similarly, state law authorizes the appointment of a guardian for the property of a person who “is unable to manage the person's property and affairs effectively for reasons such as .... *mental deficiency*...”<sup>24</sup>

**Idaho:** Idaho law authorizes the appointment of guardians and guardians ad litem for “incapacitated persons,” and defines such a person to be: “any person who is impaired, except by minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, provided, that the term shall not refer to a *developmentally disabled* person....”<sup>25</sup> State law also provides for the appointment of a conservator for a person “unable to manage his property and affairs effectively for reasons such as...*mental deficiency*...”<sup>26</sup>

**Illinois:** Illinois law authorizes the appointment of a guardian for a “disabled person,” and defines such a person as including: “a person with...a *developmental disability* and who because of his...*developmental disability* is not fully able to manage his person or estate.” State law defines “*developmental disability*” to be “a disability which is attributable to ...*mental retardation*...or...any other condition which results in impairment similar to that caused by *mental retardation* and which requires services similar to those required by *mentally retarded* persons.”<sup>27</sup>

**Indiana:** Indiana law authorizes the appointment of guardians for “incapacitated persons,” and defines such persons as “individuals who are unable to manage in whole or in part their individual's property, to provide self-care, or both “because of...*mental deficiency*...or other incapacity; or who have a “*developmental disability*.”<sup>28</sup>

**Iowa:** Iowa law expressly authorizes the appointment of a guardian for a person with *mental retardation*.<sup>29</sup>

**Kansas:** Kansas law authorizes the appointment of a guardian for a “disabled person,” and defines such a persons as: “an adult person whose ability to receive and evaluate information effectively or to communicate decisions, or both, is impaired to such an extent that the person lacks the capacity to manage such person's financial resources or, except for reason of indigency, to meet essential requirements for such person's physical health or safety, or both. State law makes no specific reference to “*mental retardation*.”<sup>30</sup>

**Kentucky:** Kentucky law authorizes the appointment of a limited guardian, guardian, limited conservator, or conservator for a person found to have a “partial disability or disability due to “*developmental disability*,” including “*mental retardation*.”<sup>31</sup>

**Louisiana:** Louisiana law authorizes the appointment of a permanent tutor for a person above the age of fifteen who possess “less than two-thirds of the average mental ability of a normal person of the same age, evidenced by standard testing procedures administered by competent persons.”<sup>32</sup>

**Maine:** Maine law authorizes the appointment of guardians and conservators and the conduct of protective proceedings for “incapacitated persons,” and defines such a person to be: “any person who is impaired by reason of...*mental deficiency*,...to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.”<sup>33</sup>

**Maryland:** Maryland law authorizes the appointment of guardians and conservators for “disabled persons,” and defines such persons without specific reference to *develop-mental disability*, *mental retardation* or *mental deficiency*.<sup>34</sup>

**Massachusetts:** Massachusetts law authorizes the appointment of guardians for “*mentally retarded* persons” and conservators of the property of persons [who] “by reason of...*mental retardation*...[are] unable to properly care for their property ....”<sup>35</sup> State law defines a “*mentally retarded* person” to be: “a person who, as a result of inadequately developed or impaired intelligence, is substantially limited in his ability to learn or adapt, as determined in accordance with established standards for the evaluation of a person's ability to function in society.”<sup>36</sup>

**Michigan:** Michigan law authorizes the appointment of guardians for “individuals with *developmental disability*” as necessary to promote and protect the well-being of the individual,<sup>37</sup> and defines “*developmental disability*” in the context of a persons older than 5 years to be:

*a severe, chronic condition that meets all of the following requirements: (I) Is attributable to a mental or physical impairment or a combination of mental and physical impairments. (ii) Is manifested before the individual is 22 years old. (iii) Is likely to continue indefinitely. (iv) Results in substantial functional limitations in 3 or more of the following areas of major life activity: (A) Self-care. (B) Receptive and expressive language. (C) Learning. (D) Mobil-ity. (E) Self-direction. (F) Capacity for independent living. (G) Economic self- sufficiency. (v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.*<sup>38</sup>

**Minnesota:** Minnesota law authorizes the appointment of a guardian or conservator for a persons who is “incapacitated,” and defines that term to mean: “lacking the ability to manage property and business affairs effectively by reason of... *mental retardation*, or other disabling cause.”<sup>39</sup>

**Mississippi:** Mississippi law authorizes the appointment of guardians for “persons of unsound mind.”<sup>40</sup> State law defines “*unsound mind*,” when used in any statute in reference to persons, to include idiots, lunatics, and persons non compos mentis.”<sup>41</sup> State law also authorizes the appointment of a conservator “if a person by reason of...*mental weakness* is incapable of managing his own estate.”<sup>42</sup>

**Missouri:** Missouri law authorizes the appointment of a guardian and conservator for a “disabled person,” and defines such a person to be: “one who is ...unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the person lacks ability to manage his financial resources.”<sup>43</sup> No specific reference is made to *mental retardation*, *developmental disability* or *mental deficiency*.

**Montana:** Montana law authorizes the appointment of a conservator or the issuance of protective order for a person who is “unable to manage his property and affairs effectively for reasons such as...*mental deficiency*....”<sup>44</sup>

**Nebraska:** Nebraska law authorizes protective proceedings and the appointment of guardians and conservators for “incapacitated persons,” and define such a person to be: “any person who is impaired by reason of...*mental deficiency*,...to the extent that the person lacks sufficient understanding or capacity to make or communicate

responsible decisions concerning himself or herself.”<sup>45</sup> State law also defines “incapacitated” to mean “lacking the ability to manage property and business affairs effectively by reason of... *mental deficiency*...”<sup>46</sup>

**Nevada**: Nevada law authorizes protective proceedings and the appointment of guardians and conservators for “incapacitated persons” and “incompetents,” and defines an “incapacitated person” to be: “a person who is impaired by reason of...*mental deficiency*..., to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.”<sup>47</sup> State law defines an “incompetent” to be: “an adult person who, by reason of...*mental deficiency*, is unable, without assistance, properly to manage and take care of himself or his property.”<sup>48</sup>

**New Hampshire**: New Hampshire law authorizes the appointment of guardians and conservators for persons with a *developmental disability*.<sup>49</sup>

**New Jersey**: New Jersey law authorizes the appointment of a guardian for an “incapacitated person,” and defines such a person to be: “a person who is impaired by reason of...*mental deficiency* to the extent that he lacks sufficient capacity to govern himself and manage his affairs.”<sup>50</sup>

**New Mexico**: New Mexico law authorizes protective services and the appointment of a guardian and conservator for an “incapacitated person,” and defines such a person” to be: “any person who demonstrates over time either partial or complete functional impairment by reason of...*mental deficiency*...to the extent that he is unable to manage his personal care or he is unable to manage his property and financial affairs.”<sup>51</sup>

**New York**: New York law authorizes the appointment of a guardian for an individual who is “incapacitated,”<sup>52</sup> and defines that term to mean an individual who “is likely to suffer harm because he or she is unable to provide for personal needs and/or property management, and cannot adequately understand and appreciate the nature and consequences of such inability.”<sup>53</sup>

**North Carolina**: North Carolina law authorizes the appointment of a guardian for a person who is “incompetent,” and defines that term to mean: lacking “sufficient capacity to manage the adult's own affairs or to make or communicate important decisions concerning the adult's person, family, or property whether the lack of capacity is due to...*mental retardation*...or similar cause or condition.”<sup>54</sup> State law also defines individuals who are “incapacitated” as: “lacking the ability to manage property and business affairs effectively by reason of...*mental deficiency*... or other disabling cause.”<sup>55</sup>

**North Dakota**: North Dakota law authorizes the appointment of a guardian for an “incapacitated person,” and defines such a person to be: “any adult person who is impaired by reason of...*mental deficiency*...to the extent that the person lacks capacity to make or communicate responsible decisions concerning that person's matters of residence, education, medical treatment, legal affairs, vocation, finance, or other matters, or which incapacity endangers the person's health or safety.”<sup>56</sup> Similarly, North Dakota law authorizes the appointment of a conservator and other protective proceedings for a person that a court determines “is unable to manage the person's property and affairs effectively for reasons such as...*mental deficiency*....”<sup>57</sup>

**Ohio**: Ohio law authorizes the appointment of a guardian and conservator for persons who are “incompetent,” and defines that term to mean: “so mentally impaired as a result of...*mental retardation*, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide.”<sup>58</sup>

**Oklahoma**: Oklahoma law authorizes the appointment of a guardian and conservator for an “incapacitated person,” and defines such a person to be: “a person...who is impaired by reason of...*mental retardation* or *developmental disability*....”<sup>59</sup> Similarly, Oklahoma law authorizes protective services for “incapacitated persons,” and defines such a person to be: “any person...who is impaired by reason of...*mental retardation*, *developmental disability* or other cause....”<sup>60</sup>

**Oregon**: Oregon law provides for the appointment of a conservator or guardian for a “financially incapable person,” and defines such a person as having: “a condition in which a person is unable to manage financial resources of the person effectively for reasons including, but not limited to...*mental deficiency*.”<sup>61</sup>

**Pennsylvania:** Pennsylvania law authorizes the appointment of a guardian for an “incapacitated person,” and defines such a person to be: “an adult, whose ability to receive and evaluate information effectively and communicate decisions in any way is impaired to such a significant extent that he is partially or totally unable to manage his financial resources or to meet essential requirements for his health and safety.”<sup>62</sup> Prior to 1992, that definition expressly included the term “*mental retardation*.”

**Rhode Island:** Rhode Island law authorizes the appointment of a guardian and conservator for a person who is “incapacitated,” and defines that term to mean: “lacking the ability to manage property and business affairs effectively by reason of...*mental deficiency*,...or other disabling cause.”<sup>63</sup> State law also permits the probate courts to appoint guardians and limited guardians based on “a functional assessment which reflects the proposed ward's current level of functioning.” The law makes no specific reference to *mental retardation*, *mental deficiency* or developmental or other disabilities.<sup>64</sup> Rhode Island law also provides for the appointment of a conservator for a person who: “by reason of disability or upon his or her own election, is unable to properly care for his or her property....”<sup>65</sup>

**South Carolina:** South Carolina law authorizes the appointment of a guardian for an “incapacitated person,” and defines such a person to be “any person who is impaired by reason of...*mental deficiency* ...to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property.”<sup>66</sup> State law also authorizes the appointment of a conservator or other protective order for a person who is “unable to manage his property and affairs effectively for reasons such as...*mental deficiency*....”<sup>67</sup>

**South Dakota:** South Dakota law authorizes the appointment of a conservator or guardian for a person “whose ability to respond to people, events and environments is impaired to such an extent that the individual lacks the capacity to manage property or financial affairs or to provide for his support or the support of legal dependents without...assistance or protection....”<sup>68</sup> The law makes no specific reference to *mental retardation*, *mental deficiency* or *developmental disability*.

**Tennessee:** Tennessee law authorizes the appointment of a conservator for a “disabled person,” and defines such a person to be: “any person eighteen (18) years of age or older determined by the court to be in need of partial or full supervision, protection and assistance by reason of... *developmental disability* or other mental or physical incapacity.”<sup>69</sup>

**Texas:** Texas law authorizes the appointment of a guardians for an “incapacitated person,”<sup>70</sup> and defines such a person to include an individual “who, because of a physical or *mental condition*, is substantially unable to provide food, clothing, or shelter for himself or herself, to care for the individual's own physical health, or to manage the individual's own financial affairs....”<sup>71</sup>

**Utah:** Utah law provides for the appointment of a guardian for an “incapacitated person,” and defines such a person to be: “any person who is impaired by reason of...*mental deficiency* ...,to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions.”<sup>72</sup> State law also provides that if the person seeking the guardianship requests a waiver of presence of the person alleged to be incapacitated, the court shall order an investigation by a court visitor, unless there is clear and convincing evidence from a physician that the person alleged to be incapacitated suffers from... profound *mental retardation*.<sup>73</sup> State law authorizes the appointment of a conservator or other protective order for person who are “unable to manage the person's property and affairs effectively for reasons such as... *mental deficiency*....”<sup>74</sup>

**Vermont:** Vermont law authorizes the appointment of a total or a limited guardian for person who is *mentally retarded* and unable to manage, without the supervision of a guardian, some or all aspects of his or her personal care or financial affairs.”<sup>75</sup> In this context, state law defines “*mentally retarded*” to mean: “significantly subaverage intellectual functioning which exists concurrently with deficits in adaptive behavior.”<sup>76</sup> Vermont law also authorizes the appointment of a guardian for “any person with *developmental disabilities* who ”is in need of supervision and protection for the person's own welfare or the public welfare,”<sup>77</sup> and defines such a person to be “a person with a severe, chronic disability that must arise before the person reaches the age of 18,

and results in: ... *mental retardation*...and...deficits in adaptive behavior at least two standard deviations below the mean for a normative comparative comparison group.”<sup>78</sup>

**Virginia:** Virginia law authorizes the appointment of a guardian to manage the personal affairs or a conservator to manage the estate and financial affairs of an “incapacitated person,” and defines such a person to be:

*an adult who [is]...incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (I) meet the essential requirements for his health, care, safety, or therapeutic needs without the assistance or protection of a guardian or (ii) manage property or financial affairs or provide for his or her support or for the support of his legal dependents without the assistance or protection of a conservator.*<sup>79</sup>

State law also authorizes the designation of a trustee of a custodial trust for a person who is “incapacitated,” and defines that term to mean “lacking the ability to manage property and business affairs effectively by reason of...*mental deficiency*....”<sup>80</sup>

**Washington:** Washington law authorizes the appointment of a guardian for an “incapacitated person,”<sup>81</sup> and defines such a person to be “an individual with a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety, and defines the term to include a person who is “incompetent by reason of...*developmental disability*,...or other mental incapacity, of either managing his or her property or caring for himself or herself, or both.”<sup>82</sup>

**West Virginia:** West Virginia law authorizes the appointment of a guardian and conservator for a “protected person,” and defines such a person to be:

*an adult...who has been found by a court, because of mental impairment, to be unable to receive and evaluate information effectively or to respond to people, events, and environments to such an extent that the individual lacks the capacity: (A) To meet the essential requirements for his or her health, care, safety, habilitation, or therapeutic needs without the assistance or protection of a guardian; or (B) to manage property or financial affairs or to provide for his or her support or for the support of legal dependents without the assistance or protection of a conservator.*<sup>83</sup>

The law expressly grandfathers “*mentally retarded persons*” for whom guardians had been previously appointed.<sup>84</sup>

**Wisconsin:** Wisconsin law authorizes the appointment of a guardian and conservator for an “incompetent” person, and defines such a person to be: “a person...substantially incapable of managing his or her property or caring for himself by reason of... *developmental disabilities*, or other like incapacities.”<sup>85</sup> In this context, state law defines a “*developmentally disabled person*” to be a person “having a disability attributable to *mental retardation*.”<sup>86</sup>

**Wyoming:** Wyoming law authorizes the appointment of a guardian or conservator for a “mentally incompetent person,”<sup>87</sup> and defines such a person to be: “an individual who is unable unassisted to properly manage and take care of himself or his property as the result of...*mental deficiency* or *mental retardation*.”<sup>88</sup>

## Notes

- <sup>1</sup> Section 12-13-21 of the Code of Alabama, last amended in 1986.
- <sup>2</sup> Section 26-2A-104.1(a) and Section 102(7)) of the Code of Alabama, last amended in 1991.
- <sup>3</sup> Section 22-52-55(a) of the Code of Alabama, last amended in 1969.
- <sup>4</sup> Section 26-2A-130(c) of the Code of Alabama, last amended in 1987.
- <sup>5</sup> Section 13.26.165(2)(A) of the Alaska State Statutes.
- <sup>6</sup> Section 13.26.353 (a)(1) of the Alaska State Statutes.
- <sup>7</sup> Section 14-5101(1) of the Arizona Revised Statutes.

- 8 Section 28-65-101(1) of the Arkansas Code, last amended in 1985.
- 9 Section 1420 of the California Probate Code.
- 10 Section 15-1.5-101 of the Colorado Revised Statutes.
- 11 Section 45a-669(f) of the Connecticut General Statutes defines "unable to meet essential requirements for his physical health or safety" to be "the inability through one's own efforts and through acceptance of assistance from family, friends and other available private and public sources, to meet one's needs for medical care, nutrition, clothing, shelter, hygiene or safety so that, in the absence of a guardian of the mentally retarded [person serious physical injury, illness or disease is likely to occur.
- 12 Section 45a-676(a) of the Connecticut General Statutes. Section 45a-669(g) defines "unable to make informed decisions about matters related to one's care" to be "the inability of a mentally retarded person to achieve a rudimentary understanding, after conscientious efforts at explanation, of information necessary to make decisions about his need for physical or mental health care, food, clothing, shelter, hygiene, protection from physical abuse or harm, or other care.
- 13 Section 1-1g of the Connecticut General Statutes. "General intellectual functioning" means the results obtained by assessment with one or more of the individually administered general intelligence tests developed for that purpose and standardized on a significantly adequate population and administered by a person or persons formally trained in test administration; "Significantly subaverage" means an intelligence quotient more than two standard deviations below the mean for the test; "Adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for the individual's age and cultural group; and "Developmental period" means the period of time between birth and the eighteenth birthday.
- 14 Section 3901 of the Delaware Code.
- 15 Section 3902(2) of the Delaware Code.
- 16 Section 5505 of the Delaware Code.
- 17 Section 21-2066 of the District of Columbia Code.
- 18 Section 21-2041 of the District of Columbia Code.
- 19 Section 21-2011(11) of the District of Columbia Code.
- 20 Sections 21-2054(c) and 21-2041(f) of the District of Columbia Code.
- 21 Section 86.041 of the 2001 Florida Statutes.
- 22 Section 29-5-1(a)(1) of the Georgia Code.
- 23 Section 560:5-101 of the 2000 Hawaii Revised Statutes.
- 24 Section 560:5-401 of the 2000 Hawaii Revised Statutes.
- 25 Section 15-5-101(a) of the Idaho Code.
- 26 Section 15-5-401(b) of the Idaho Code.
- 27 Section 11a-1 and -2 of Act 5, Chapter 755 of the Illinois Compiled Statutes.
- 28 Section 1 of Title 29, Article 3, Chapter 6 of the Indiana Code and Section 1 of Title 12, Article 10, Chapter 7 of the Indiana Code.
- 29 Section 222.34 of the Iowa Code 2001.
- 30 Section 3002(a) of Chapter 59 of the Kansas Statutes.
- 31 Sections 540 and 510(7) of Chapter 387 of the Kentucky Revised Statutes.
- 32 Article 355 of the Louisiana Code of Civil Procedure.

- 33 Sections 5-101(1) and 5401(2) of Title 18A of the Maine Revised Statutes.
- 34 Section 101(e) of Title 13 of the Maryland Statutes 2000.
- 35 Section 1 of Chapter 201 of the General Laws of Massachusetts.
- 36 *Ibid.*
- 37 Section 1602(1) of Chapter 330 of the Michigan Compiled Laws.
- 38 Section 100b(20) of Chapter 330 of the Michigan Compiled Laws.
- 39 Section 1(9) of Chapter 529 of the Minnesota Statutes 2000.
- 40 Section 127 of Title 93, Chapter 13 of the Mississippi Laws.
- 41 Section 57 of Title 1, Chapter 3 of the Mississippi Laws.
- 42 Section 251 of Title 94, Chapter 13 of the Mississippi Laws.
- 43 Section 10(4) of Title XII, Chapter 475 of the Missouri Revised Statutes.
- 44 Section 409(2)(a) of Title 72, Chapter 5 of the Montana Code Annotated 2001.
- 45 Sections 2601(1) and 2630 of Chapter 30 of the Nebraska Revised Statutes.
- 46 Section 3502 (8) of Chapter 30 of the Nebraska Revised Statutes.
- 47 Section 175 of Chapter 132 of the Nevada Revised Statutes.
- 48 Section 19 of Chapter 159 of the Nevada Revised Statutes.
- 49 Section 2(V) of Title XLIV, Chapter 464-a of the New Hampshire Revised Statutes Annotated.
- 50 Section 2 of Title 3B, Article 1 of the New Jersey Permanent Statutes.
- 51 Section 14 of Title 38, Article 4; Section 101(f) of Title 45, Article 5; and Section 16M of Title 27, Article 7 of the New Mexico Statutes Annotated.
- 52 Section 2(a) of Article 81 of the New York State Consolidated Laws.
- 53 Section 2(b) of Article 81 of the New York State Consolidated Laws.
- 54 Section 1101(7) and (8) of Chapter 35A of the North Carolina General Statutes.
- 55 Section 1(8) of Chapter 33B of the North Carolina General Statutes.
- 56 Section 30.1-26-01(2) of the North Dakota Century Code.
- 57 Section 30.1-29-01(2) of the North Dakota Century Code.
- 58 Section 2111.01(D) of the Ohio Revised Code.
- 59 Section 30-1-111(A)(12)(a)(2) of the Oklahoma Statutes.
- 60 Section 43A-10-103(A)(4)(a) of the Oklahoma Statutes.
- 61 Section 5(3) of Chapter 125 of the Oregon Revised Statutes.
- 62 Section 5501 of Title 20 of the Pennsylvania Consolidated Statutes Annotated.
- 63 Section 1 of Title 18, Chapter 13 of the General Laws of Rhode Island.
- 64 Section 2(2) of Title 33, Chapter 15 of the General Laws of Rhode Island.
- 65 Section 44 of Title 33, Chapter 15 of the General Laws of Rhode Island.
- 66 Section 201(16) and (18) of Title 62, Chapter 1 and Section 101(1) of Title 62, Chapter 5 of the South Carolina Code of Laws.
- 67 Section 201(6) and (9) of Title 62, Chapter 1 and Section 401(2) of Title 62, Chapter 5 of the South Carolina Code of Laws.

- 68 Section 303 of Chapter 29A-5 of the South Dakota Codified Laws.
- 69 Sections 101(4) and 101(7) of Title 34, Chapter 11 of the Tennessee Code.
- 70 Section 602 of Chapter XIII of the Texas Probate Code.
- 71 Section 3(p) of Chapter I and Section 601(13) of Chapter XIII of the Texas Probate Code.
- 72 Section 201(22) of Chapter 1 of the Utah Uniform Probate Code.
- 73 Section 303(4) of Chapter 5 of the Utah Uniform Probate Code.
- 74 Section 401(2)(a) of Chapter 5 of the Utah Uniform Probate Code.
- 75 Sections 3063 and 3061 of Title 14, Chapter 111 of the Vermont Statutes.
- 76 Section 3061(4) of Title 14, Chapter 111 of the Vermont Statutes.
- 77 Section 9304 of Title 18, Chapter 215 of the Vermont Statutes.
- 78 Section 9302(1) of Title 18, Chapter 215 of the Vermont Statutes.
- 79 Section 134.6 of Title 37, Chapter 4 of the Code of Virginia.
- 80 Section 34.1 of Title 55, Chapter 2.1 (the Uniform Custodial Trust Act) of the Code of Virginia.
- 81 Section 10(1) of Title 11, Chapter 11-88 of the Revised Code of Washington.
- 82 Section 10(1)(e) of Title 11, Chapter 11-88 of the Revised Code of Washington.
- 83 Section 4(13) of Chapter 44A, Article 1 of the West Virginia Code.
- 84 Section 2(a) of Chapter 44A, Article 1 of the West Virginia Code.
- 85 Section 880.01(4) of the Wisconsin Statutes Annotated.
- 86 Section 880.01(2) of the Wisconsin Statutes Annotated.
- 87 Chapter 3 of Title 3 of the 2001 Wyoming Statutes.
- 88 Section 101(a)(xii) of Title 3, Chapter 1 of the 2001 Wyoming Statutes.

## 5. Notes on Criminal Responsibility and Competence

**Alabama:** Alabama law regarding criminal responsibility permits a defendant to establish that the he or she is “*mentally retarded*,” and defines that term to mean “significant sub-average general intellectual functioning resulting in or associated with concurrent impairments in adaptive behavior and manifested during the developmental period, as measured by appropriate standardized testing instruments.<sup>1</sup> In capital cases, if there is reasonable ground to believe that a defendant may presently lack the capacity to proceed or continue to trial, courts are required to determine the presence of any mental disease or defect which, if determined to be present, would affect the capacity of the defendant to proceed or continue to trial or which would affect the defendant's criminal responsibility at the time of the commission of the crime.”<sup>2</sup>

**Alaska:** Alaska law allows a defendant to establish as a defense to criminal responsibility that he or she has a “mental disease or defect,” and defines that term to mean: “a disorder of thought or mood that substantially impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life; “mental disease or defect” also includes *retardation* which means a significantly below average general intellectual functioning that impairs a person's ability to adapt to or cope with the ordinary demands of life.”<sup>3</sup>

**Arizona:** Arizona law defines as “incompetent to stand trial” a person who “as a result of a mental illness, defect or disability” is unable to understand the nature and object of the proceeding or to assist in the defendant's defense.”<sup>4</sup>

**Arkansas:** Arkansas law provides that “no defendant with *mental retardation* at the time of committing capital murder shall be sentenced to death,”<sup>5</sup> and defines “*mental retardation*” to be: “...Significantly sub-average general intellectual functioning accompanied by significant deficits or impairments in adaptive functioning manifest in the developmental period, but no later than age eighteen (18); and...Deficits in adaptive behavior.”<sup>6</sup> It further provides that “there is a rebuttable presumption of mental retardation when a defendant has an intelligence quotient of sixty-five (65) or below.”<sup>7</sup>

**California:** California provides that: “a person cannot be tried or adjudged to punishment while that person is *mentally incompetent*: if, as a result of mental disorder or *developmental disability*, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner. ‘*Developmental disability*’ is a disability that originates before an individual attains age 18, continues, or can be expected to continue, indefinitely and constitutes a substantial handicap for the individual and expressly includes both “*mental retardation*” and “handicapping conditions found to be closely related to *mental retardation* or to require treatment similar to that required for *mentally retarded* individuals.”<sup>8</sup>

**Colorado:** Colorado law permits defendants in felony cases to be declared a *mentally retarded* defendant,<sup>9</sup> and defines that term to mean: “any defendant with significantly subaverage general intellectual functioning existing concurrently with substantial deficits in adaptive behavior and manifested and documented during the developmental period.”<sup>10</sup> Colorado forbids the imposition of a sentence of death upon any defendant who is determined to be a *mentally retarded* defendant.<sup>11</sup>

**Connecticut:** Connecticut law defines the “incompetency” of a criminal defendant to be the inability: “to understand the proceedings against him or to assist in his own defense”<sup>12</sup> but makes no specific reference to the treatment of persons who are “*mentally retarded*,” “*mentally deficient*,” “*developmentally disabled*” or who have a “mental disease or defect.”

**Delaware:** Delaware law establishes an affirmative defense in any prosecution for an offense, that, at the time of the conduct charged, as a result of mental illness or mental defect, the accused lacked substantial capacity to appreciate the wrongfulness of the accused's conduct.<sup>13</sup> “Mental defect” is defined to be “any condition of the brain or nervous system recognized as defective, as compared with an average or normal condition, by a substantial part of the medical profession.”<sup>14</sup>

**District of Columbia:** District of Columbia law authorizes its courts to suspend sentence, or suspend the entering of an order sending a person to prison if the court finds that the person is at least *moderately mentally retarded*,<sup>15</sup> and defines such a person to be: “a person who is...impaired in adaptive behavior to a moderate,

severe or profound degree and functioning at the moderate, severe or profound intellectual level in accordance with standard measurements....<sup>16</sup> With respect to youthful offenders, District of Columbia law provides that when a child is brought before a court upon allegations that he is delinquent, neglected, or in need of supervision, and it appears to the court that the child is at least moderately *mentally retarded*, the court may adjourn the proceedings.<sup>17</sup>

**Florida:** Florida law permits a court to determine that a criminal defendant is “incompetent to proceed” to trial based upon a finding that the defendant is “*retarded*,”<sup>18</sup> and defines that term to mean: “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18.”<sup>19</sup> Florida law also provides that a “sentence of death may not be imposed upon a defendant convicted of a capital felony if it is determined in accordance with this section that the defendant has *mental retardation*,” and defines that term to mean: “significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18.”<sup>20</sup>

**Georgia:** Georgia law permits a defense of insanity where a jury or court finds that the defendant is “*mentally retarded*”<sup>21</sup> and allows for a plea of “guilty but mentally retarded.”<sup>22</sup> In this context, state law defines “*mentally retarded*” to be: “having significantly subaverage general intellectual functioning resulting in or associated with impairments in adaptive behavior which manifested during the developmental period.”<sup>23</sup> With respect to youthful offenders, Georgia authorizes juvenile court judges, “If, at any time, the evidence indicates that a child may be suffering from *mental retardation*,” to make a formal determination of whether the child has been determined to be handicapped....<sup>24</sup>

**Hawaii:** Hawaii law prohibits the trial, conviction or sentencing for the commission of an offense of any person who lacks the capacity to understand the proceedings against him or her or to assist in his or her own defense as a result of a physical or mental disease, disorder, or defect.<sup>25</sup>

**Idaho:** Idaho law provides that “mental condition shall not be a defense to any charge of criminal conduct,”<sup>26</sup> and does not permit any special plea of not guilty based on “mental disease or defect.”<sup>27</sup> State law does provide, however, that “no person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted, sentenced or punished for the commission of an offense so long as such incapacity endures.”<sup>28</sup>

**Illinois:** Illinois law establishes the fact that the “defendant was *mentally retarded*” as a ground that is to be accorded weight in favor of withholding or minimizing a sentence of imprisonment,<sup>29</sup> and defines the term “*mentally retarded*” in this context to be: “sub- average general intellectual functioning generally originating during the developmental period and associated with impairment in adaptive behavior reflected in delayed maturation or reduced learning ability or inadequate social adjustment.”<sup>30</sup>

**Indiana:** Indiana law directs its criminal courts to determine whether a defendant is currently mentally ill and either dangerous or gravely disabled whenever a defendant is found not responsible by reason of insanity at the time of a crime.<sup>31</sup> State law defines “mental illness” in this context to be: “a psychiatric disorder that...includes mental retardation ....”<sup>32</sup> Indiana Law also provides that if a court determines that a defendant who is charged with a murder for which the state seeks a death sentence is a *mentally retarded* individual,” the court shall dismiss the request for a death sentence,<sup>33</sup> and defines the term “*mentally retarded* individual” in this context to be: “an individual who, before becoming twenty-two (22) years of age, manifests: (1) significantly subaverage intellectual functioning; and (2) substantial impairment of adaptive behavior; that is documented in a court ordered evaluative report.”<sup>34</sup>

**Iowa:** Iowa law provides that If the evidence received at an juvenile court hearing indicates that a child is *mentally retarded*, the court may trigger the initiation of civil commitment proceedings.”<sup>35</sup> Iowa also authorizes its juvenile courts to suspend sentence or orders following a criminal conviction in the district court of a child who is dependent, neglected, or delinquent and who appears, based on evidence presented before sentencing, to be “*mentally retarded*.”<sup>36</sup>

**Kansas**: Kansas law provides that if a court determines that a defendant convicted of the crimes of capital murder or murder in the first degree is *mentally retarded*, the court shall not impose a sentence of death.<sup>37</sup> In this context, state law defines "*mentally retarded*" to be: "having significantly subaverage general intellectual functioning ... to an extent which substantially impairs one's capacity to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law."<sup>38</sup>

**Kentucky**: Kentucky law precludes the imposition of the death penalty for offenders who have been determined to be "seriously *mentally retarded*,"<sup>39</sup> and defines that term to mean: "a defendant with significant subaverage intellectual functioning existing concurrently with substantial deficits in adaptive behavior and manifested during the developmental period ...."Significantly subaverage general intellectual functioning" is defined as an intelligence quotient (I.Q.) of seventy (70) or below."<sup>40</sup>

**Louisiana**: Louisiana law makes no specific reference to the treatment of persons who are "*mentally retarded*," "*mentally deficient*," "*developmentally disabled*" or who have a "mental disease or defect."

**Maine**: Maine law permits defendants to be found incompetent to stand trial "by reason of mental disease or *mental defect*," and authorizes its criminal courts to "determine the defendant's mental condition with reference to the issues of competency, criminal responsibility, abnormal condition of mind and any other issue involving the mental or emotional condition of the defendant."<sup>41</sup>

**Maryland**: Maryland law provides that "a defendant is not criminally responsible for criminal conduct if, at the time of that conduct, the defendant, because of...*mental retardation*, lacks substantial capacity to: (1) appreciate the criminality of that conduct; or (2) conform that conduct to the requirements of law."<sup>42</sup> Maryland law prohibits the imposition of a death sentence upon an individual found guilty of murder in the first degree who was, at the time the murder was committed, *mentally retarded*,<sup>43</sup> and defines "*mentally retarded*" to be: "significantly subaverage intellectual functioning as evidenced by an intelligence quotient of 70 or below on an individually administered intelligence quotient test and impairment in adaptive behavior, and the mental retardation is manifested before the individual attains the age of 22."<sup>44</sup> State law also prohibits capital punishment of an individual who has been subsequently determined to be "incompetent," and defines "incompetent" to mean: a "state of mind...[which] as a result of...mental retardation lacks awareness...."<sup>45</sup>

**Massachusetts**: Massachusetts law provides alternative procedures for taking testimony from witnesses with *mental retardation*, and defines that term to mean: "substantial limitations in present functioning manifesting before age eighteen and characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work."<sup>46</sup>

**Michigan**: Michigan law makes no specific reference to the treatment of persons who are "*mentally retarded*," "*mentally deficient*," "*developmentally disabled*" or who have a "mental disease or defect," but provides that a defendant to a criminal charge be presumed competent to stand trial and may be determined incompetent only if "he is incapable because of his *mental condition* of understanding the nature and object of the proceedings against him or of assisting in his defense in a rational manner."<sup>47</sup>

**Minnesota**: Minnesota law provides generally that "no person shall be tried, sentenced, or punished for any crime while...*mentally deficient* so as to be incapable of understanding the proceedings or making a defense; but the person shall not be excused from criminal liability except upon proof that at the time of committing the alleged criminal act the person was laboring under such a defect of reason, from one of these causes, as not to know the nature of the act, or that it was wrong."<sup>48</sup>

**Mississippi**: Mississippi law provides that any person charged with a crime or delinquency who was feeble-minded to such an extent as not to be responsible for his or her act or omission at the time when the act or omission charged was made, shall be remand to custody of the chancery court.<sup>49</sup>

**Missouri**: Missouri law provides that "a person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental...defect such person was incapable of knowing and appreciating the nature,

quality, or wrongfulness of such person's conduct,” and permits evidence that the defendant did or did not suffer from a mental defect to determine if such a person should be sentenced to death.<sup>50</sup>

**Montana:** Montana law makes no specific reference to the treatment of persons who are “*mentally retarded*,” “*mentally deficient*,” “*developmentally disabled*” or who have a “mental disease or defect,” but includes as a mitigating circumstance related to whether or not a death penalty should be imposed whether “the capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law was substantially impaired.”<sup>51</sup>

**Nebraska:** Nebraska law prohibits the imposition of the death penalty upon “any person with *mental retardation*,” and defines that term to mean: “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior. An intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of *mental retardation*.”<sup>52</sup>

**Nevada:** Nevada law establishes “under the influence of extreme mental or emotional disturbance” as a mitigating circumstance with respect to the imposition of the death penalty in capital cases,<sup>53</sup> but makes no specific reference to the treatment of persons who are “*mentally retarded*,” “*mentally deficient*,” “*developmentally disabled*” or who have a “mental disease or defect.”

**New Hampshire:** New Hampshire law makes no specific reference to the treatment of persons who are “*mentally retarded*,” “*mentally deficient*,” “*developmentally disabled*” or who have a “mental disease or defect.”

**New Jersey:** New Jersey law makes no specific reference to the treatment of persons who are “*mentally retarded*,” “*mentally deficient*,” “*developmentally disabled*” or who have a “mental disease or defect,” but does prohibit the commitment of juvenile offenders who are *developmentally disabled* to a State juvenile facility.<sup>54</sup>

**New Mexico:** New Mexico law establishes a procedure for determining that a criminal defendant is incompetent to stand trial based on a finding “that the defendant has *mental retardation*....,”<sup>55</sup> and defines “*mental retardation*” in this context to be: “significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior. An intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of *mental retardation*.”<sup>56</sup> New Mexico law explicitly provides that “the penalty of death shall not be imposed on any person who is *mentally retarded*,” and uses the same definition of the term.<sup>57</sup> State law also establishes special alternative procedures for determining competency to testify or for taking the testimony of the witness with mental retardation, and defines that term to mean: “substantial limitations in present functioning characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work.”<sup>58</sup>

**New York:** New York law provides that in any criminal prosecution, it is an affirmative defense that when the defendant engaged in the proscribed conduct, he lacked criminal responsibility by reason of mental disease or defect.<sup>59</sup> Similarly, the competency of a defendant to stand trial is determined by the court based on a finding of whether the defendant “as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense.”<sup>60</sup>

**North Carolina:** North Carolina law provides that “no person may be tried, convicted, sentenced, or punished for a crime when by reason of mental illness or defect he is unable to understand the nature and object of the proceedings against him, to comprehend his own situation in reference to the proceedings, or to assist in his defense in a rational or reasonable manner.”<sup>61</sup> State law also permits a defendant in a criminal proceeding to raise the defense of insanity induced by “mental disease, defect, or other condition bearing upon the issue of whether he had the mental state required for the offense charged.”<sup>62</sup> In sentencing defendants convicted of felonies, State law also permits consideration of mitigating factors including whether the “defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced the defendant's culpability for the offense.”<sup>63</sup> In sentencing defendants convicted of capital offenses, state law

authorizes courts to consider as a mitigating factor whether the “capital felony was committed while the defendant was under the influence of mental or emotional disturbance.”<sup>64</sup>

**North Dakota**: North Dakota law prohibits the trial, conviction or sentencing of “mentally unfit” defendants,<sup>65</sup> and generally provides that: “an individual is not criminally responsible for criminal conduct if, as a result of mental disease or defect existing at the time the conduct occurs: (a) the individual lacks substantial capacity to comprehend the harmful nature or consequences of the conduct, or the conduct is the result of a loss or serious distortion of the individual's capacity to recognize reality; and (b) it is an essential element of the crime charged that the individual act willfully.”<sup>66</sup>

**Ohio**: Ohio law permits a person to be determined by a court to be incompetent to stand trial and to be found by a jury to be not guilty of a crime by reason of insanity because of *mental retardation*.<sup>67</sup>

**Oklahoma**: Oklahoma law provides that: “all persons are capable of committing crimes, except those belonging to the following classes: “...persons who are impaired by reason of *mental retardation* upon proof that at the time of committing the act charged against them they were incapable of knowing its wrongfulness.”<sup>68</sup> State law also provides that a defendant in any criminal prosecution who at the time of the trial is “impaired by reason of *mental retardation*” may be found by a jury to be not guilty on account of such “unsoundness of mind.”<sup>69</sup>

**Oregon**: Oregon law permits a plea by a criminal defendant of “guilty except for insanity” if “as a result of *mental...defect* at the time of engaging in criminal conduct, the person lacks substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law,<sup>70</sup> and allows defendants to offer evidence of mental defect constituting insanity as an affirmative defense.<sup>71</sup> State law also permits a court at any time before or during the trial in any criminal case, to determine that a defendant is not fit to proceed by reason of incapacity “as a result of *mental...defect*.”<sup>72</sup>

**Pennsylvania**: Pennsylvania law provides of an affirmative defense in criminal cases of “guilty but mentally ill,” and defines “mentally ill” to be: “one, who as a result of mental disease or defect, lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law.”<sup>73</sup>

**Rhode Island**: Rhode Island law makes no specific reference to the treatment of persons who are “*mentally retarded*,” “*mentally deficient*,” “*developmentally disabled*” or who have a “mental disease or defect,” but defines “mental incompetency” to stand trial to mean: “unable to understand the character and consequences of the proceedings against him or her or is unable properly to assist in his or her defense.”<sup>74</sup>

**South Carolina**: South Carolina law establishes an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of...*mental defect*, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong,<sup>75</sup> and permits a verdict of “guilty but mentally ill” in such circumstances.<sup>76</sup> South Carolina law also establishes the fact that a “defendant had *mental retardation* at the time of the crime,” as a mitigating circumstance to be considered by a judge during a separate sentencing proceeding to determine whether sentence should be death or life imprisonment, and defines “*mental retardation*,” to be: “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.”<sup>77</sup>

**South Dakota**: South Dakota law provides that “a person cannot be tried, sentenced, or punished for any public offense while he is mentally incompetent to proceed,” and defines that term to mean: “the condition of a person who is suffering from a...*developmental disability*... rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.”<sup>78</sup> State law also provides that “the death penalty may not be imposed upon any person who was *mentally retarded* at the time of the commission of the offense and whose mental retardation was manifested and documented before the age of eighteen years,” and defines “*mental retardation*” to be “significant subaverage general intellectual functioning existing concurrently with substantial related deficits in applicable adaptive skill areas. An intelligence quotient exceeding seventy on a reliable standardized measure of

intelligence is presumptive evidence that the defendant does not have significant subaverage general intellectual functioning.”<sup>79</sup>

**Tennessee:** Tennessee law permits a person with *mental retardation* charged with a felony to be acquitted of the charge on a verdict of “not guilty by reason of insanity because of *mental retardation* at the time of the commission of the crime,”<sup>80</sup> and defines “*mental retardation*” to be: “(1) Significantly subaverage general intellectual functioning as evidenced by a functional intelligence quotient (I.Q.) of seventy (70) or below; (2) Deficits in adaptive behavior; and (3) The *mental retardation* must have been manifested during the developmental period, or by eighteen (18) years of age.”<sup>81</sup> Tennessee law also prohibits the imposition of a death sentence on a defendant “with *mental retardation* at the time of committing first degree murder.”<sup>82</sup>

**Texas:** While Texas law makes no specific reference to the competency of persons who are “*mentally retarded*,” “*mentally deficient*,” “*developmentally disabled*” or who have a “mental disease or defect” to stand trial,<sup>83</sup> it directs state courts to determine an individual’s competency by appointing “disinterested experts experienced and qualified in mental health or *mental retardation* to examine the defendant....”<sup>84</sup> If the court determines that the defendant is incompetent, the court is authorized to conduct a further hearing “to determine whether or not the defendant...is a person with mental retardation and meets the criteria for commitment to a residential care facility...”<sup>85</sup> Texas law outlines a similar procedure to be followed by the courts if a defendant raises an insanity defense.<sup>86</sup> Texas law also provides for a finding by a juvenile court that a “a child alleged by petition or found to have engaged in delinquent conduct or conduct indicating a need for supervision” is “unfit to proceed” because “as a result of...mental retardation,” the child “lacks capacity to understand the proceedings” or to assist in his or her own defense.<sup>87</sup>

**Utah:** Utah law provides an affirmative defense of “mental illness” for any criminal prosecution,<sup>88</sup> and defines “mental illness” to be: “a mental disease or defect that substantially impairs a person's mental, emotional, or behavioral functioning. A mental defect may be a congenital condition, the result of injury, or a residual effect of a physical or mental disease and includes, but is not limited to, *mental retardation*.”<sup>89</sup> “*Mental retardation*” is, in turn, defined to be: “a significant subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested during the developmental period as defined by the current Diagnostic and Statistical Manual of the American Psychiatric Association.”<sup>90</sup> Utah law also provides that a person “suffering from...*mental retardation* is incompetent to proceed in a criminal trial.”<sup>91</sup>

**Vermont:** Vermont law provides that “a person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks adequate capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law... The terms “mental disease or defect” shall include congenital and traumatic mental conditions.”<sup>92</sup> State law also defines provides that a court may find a defendant “incompetent to stand trial due to a mental disease or mental defect.”<sup>93</sup>

**Virginia:** Virginia law allows a jury in a criminal case to return a verdict of “acquittal by reason of insanity,” after which the court is required to have the acquittee evaluated by professionals “skilled in the diagnosis of mental illness and *mental retardation*.”<sup>94</sup>

**Washington:** Washington law generally prohibits the trial, conviction or sentencing of an “incompetent” person so long as such incapacity continues,<sup>95</sup> and defines “incomp-etency” to be lacking “the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect.”<sup>96</sup> State law also establishes the defense of insanity if a defendant, at the time of the commission of an offense, as a result of mental disease or defect, was affected to such an extent that he or she was either unable to perceive the nature and quality of the act with which he or she is charged or was unable to tell right from wrong with reference to the particular act charged.<sup>97</sup> In the context of special sentencing proceedings related to the imposition of the death penalty, Washington law provides that “in no case, however, shall a person be sentenced to death if the person was mentally retarded at the time the crime was committed,” and defines “*mentally retarded*” to be: “Significantly subaverage general intellectual functioning; (ii) existing concurrently with deficits in adaptive behavior; and (iii) both significantly subaverage general intellectual functioning and deficits in adaptive behavior were manifested during the developmental period.”<sup>98</sup>

**West Virginia:** West Virginia law provides that a defendant in a criminal case “may be incompetent to stand trial or is not criminally responsible by reason of...*mental retardation*....”<sup>99</sup> State law also provides that a criminal defendant may be “found not guilty by reason of mental illness, *mental retardation* or addiction.”<sup>100</sup>

**Wisconsin:** Wisconsin law provides that a person is not responsible for criminal conduct “if, at the time, as a result of *mental disease or defect* the person lacked substantial capacity to appreciate the wrongfulness of his conduct or conform his or her conduct to the requirements of law.”<sup>101</sup> State law also permits a plea of “not guilty by reason of mental disease or defect.”<sup>102</sup>

**Wyoming:** Wyoming law provides generally that “a person is not responsible for criminal conduct if at the time of the criminal conduct, as a result of *mental...deficiency*, he lacked substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law.”<sup>103</sup> State law also provides that “no person shall be tried, sentenced or punished for the commission of an offense while, as a result of *mental...deficiency*, he lacks the capacity, to: (I) Comprehend his position; (ii) Understand the nature and object of the proceedings against him; (iii) Conduct his defense in a rational manner; and (iv) Cooperate with his counsel to the end that any available defense may be interposed.”<sup>104</sup> In both of these contexts, state law defines “*mental deficiency*” to be: “a defect attributable to *mental retardation*....”<sup>105</sup> In determining whether to impose the death penalty in a capital case, Wyoming courts may consider as a “mitigating circumstance,” whether “the murder was committed while the defendant was under the influence of extreme mental or emotional disturbance.”<sup>106</sup>

## Notes

<sup>1</sup> Section 15-24-2(3) of the Code of Alabama, last amended in 1985.

<sup>2</sup> Section 15-16-22 of the Code of Alabama, last amended in 1985.

<sup>3</sup> Section 12.47.130(5) of the Alaska State Statutes.

<sup>4</sup> Section 13-4501(2) of the Arizona Revised Statutes.

<sup>5</sup> Section 5-4-618(b) of the Arkansas Code.

<sup>6</sup> Section 5-4-618(a)(1) of the Arkansas Code. The statute also places the burden of proving mental retardation at the time of committing the offense by a preponderance of the evidence on the defendant. This law was last amended in 1993.

<sup>7</sup> *Ibid.*

<sup>8</sup> Section 1367(a) of the California Penal Code.

<sup>9</sup> Section 16-9-402 of the Colorado Revised Statutes, last amended in 1993.

<sup>10</sup> Section 16-11-311 of the Colorado Revised Statutes.

<sup>11</sup> Sections 6-9-403 and 16-11-103 of the Colorado Revised Statutes, last amended in 1993. Colorado also has similar provisions related to *developmentally disabled* offenders in its youthful offender system.

<sup>12</sup> Section 54-56d of the Connecticut General Statutes.

<sup>13</sup> Section 401(a) of the Delaware Code. If the defendant prevails in establishing such an affirmative defense, the trier of fact shall return a verdict of “not guilty by reason of insanity.”

<sup>14</sup> Section 222(16) of the Delaware Code.

<sup>15</sup> Section 21-1115(a) of the District of Columbia Code.

<sup>16</sup> Section 6-1902(2) of the District of Columbia Code.

<sup>17</sup> Section 21-1114 of the District of Columbia Code.

<sup>18</sup> Section 916.302(1)(a) of the 2001 Florida Statutes.

- 19 Section 916.106(12) of the 2001 Florida Statutes. The section defines “significantly subaverage general intellectual functioning” to mean “performance which is two or more standard deviations from the mean score on a standardized intelligence test, and “adaptive behavior” to mean “the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of the individual's age, cultural group, and community.
- 20 Section 921.137 of the 2001 Florida Statutes.
- 21 Section 7-7-131 of the Georgia Code.
- 22 Section 17-2-4 of the Georgia Code.
- 23 Section 7-7-131 of the Georgia Code.
- 24 Section 15-11-149 of the Georgia Code.
- 25 Section 704-403 of the 2000 Hawaii Revised Statutes.
- 26 Section 18-207(1) of the Idaho Code.
- 27 Section 19-1715 of the Idaho Code.
- 28 Section 18-210 of the Idaho Code.
- 29 Section 5-5-3.1 of Act 5, Chapter 730 of the Illinois Compiled Statutes.
- 30 Section 5-1-13 of Act 5, Chapter 730 of the Illinois Compiled Statutes.
- 31 Section 5 of Title 35, Article 36, Chapter 2 of the Indiana Code.
- 32 Section 130 of Title 12, Article 7, Chapter 2 of the Indiana Code.
- 33 Section 5(e) of Title 35, Article 36, Chapter 2 of the Indiana Code.
- 34 Section 2 of Title 35, Article 36, Chapter 9 of the Indiana Code.
- 35 Section 232.51 of the Iowa Code 2001.
- 36 Section 222.53 of the Iowa Code 2001. If the child is committed as a child with mental illness or *mental retardation*, any order adjudicating the child to have committed a delinquent act shall be set aside and the petition shall be dismissed.
- 37 Section 4634 of Chapter 21 of the Kansas Statutes.
- 38 Section 4634(f) of Chapter 21 of the Kansas Statutes.
- 39 Section 140 of Chapter 532 of the Kentucky Revised Statutes.
- 40 <sup>1</sup>Section 130(2) of Chapter 532 of the Kentucky Revised Statutes.
- 41 Section 101-B of Title 15 of the Maine Revised Statutes.
- 42 Section 109(a) of Title 3 of the Maryland Statutes 2000.
- 43 Section 412(g)(1) of Title 3 of the Maryland Statutes 2000.
- 44 Section 412(g)(1)(f)(3) of Title 3 of the Maryland Statutes 2000.
- 45 Section 904(a)(2) of Title 3 of the Maryland Statutes 2000.
- 46 Section 23E of Chapter 233 of the General Laws of Massachusetts.
- 47 Section 2020 of Chapter 330 of the Michigan Compiled Laws.
- 48 Section: 26 of Chapter 611 of the Minnesota Statutes 2000.
- 49 Section 3 of Title 99, Chapter 13 of the Mississippi Laws.
- 50 Sections 30(1) and 15 of Title XII, Chapter 552 of the Missouri Revised Statutes.
- 51 Section 304(d)(a) of Title 46, Chapter 18 of the Montana Code Annotated 2001.

- 52 Section 105.01(2) of Chapter 28 of the Nebraska Revised Statutes.
- 53 Section 35 of Chapter 200 of the Nevada Revised Statutes.
- 54 Section 44(c)(2) of Title 2A, Article 4A of the New Jersey Permanent Statutes.
- 55 Section 1 of Title 31, Article 9 of the New Mexico Statutes Annotated.
- 56 Section 1.6E of Title 31, Article 9 of the New Mexico Statutes Annotated.
- 57 Section 2.1 of Title 31, Article 20A of the New Mexico Statutes Annotated.
- 58 Section 8 of Title 38, Article 6 of the New Mexico Statutes Annotated.
- 59 Section 14 of Article 40 of the New York State Consolidated Laws.
- 60 Section 10 of Article 730 of the New York State Consolidated Laws.
- 61 Section 1001(a) of Chapter 15A of the North Carolina General Statutes.
- 62 Section 959 of Chapter 15A of the North Carolina General Statutes.
- 63 Section 1340.16(e)(3) of Chapter 15A of the North Carolina General Statutes.
- 64 Section 2000(f)(2) of Chapter 15A of the North Carolina General Statutes.
- 65 Section 12.1-04-04 of the North Dakota Century Code.
- 66 Section 12.1-04.1-01 of the North Dakota Century Code.
- 67 Sections 2945.37 and 2945.40(A) of the Ohio Revised Code.
- 68 Section 21-152(3) of the Oklahoma Statutes.
- 69 Sections 22-925 and 22-1175.5(3) of the Oklahoma Statutes.
- 70 Section 295(1) of Chapter 161 of the Oregon Revised Statutes.
- 71 Sections 300 and 305 of Chapter 161 of the Oregon Revised Statutes.
- 72 Section 360 of Chapter 161 of the Oregon Revised Statutes.
- 73 Section 314(c)(1) of Title 18 of the Pennsylvania Consolidated Statutes Annotated.
- 74 Section 3.3(a)(5) of Title 40.1, Chapter 5 of the General Laws of Rhode Island.
- 75 Section 10A of Title 17, Chapter 24 of the South Carolina Code of Laws.
- 76 Section 20 of Title 17, Chapter 24 of the South Carolina Code of Laws.
- 77 Section 20(C)(b)(10) of Title 16, Chapter 3 of the South Carolina Code of Laws.
- 78 Sections 1 and 2 of Chapter 10A-2 of the South Dakota Codified Laws.
- 79 Sections 26.1 and 26.2 of Chapter 23A-27A of the South Dakota Codified Laws.
- 80 Section 502 of Title 33, Chapter 5 of the Tennessee Code.
- 81 Section 203(a) of Title 39, Chapter 13 of the Tennessee Code.
- 82 Section 203(b) of Title 39, Chapter 13 of the Tennessee Code.
- 83 Section 1A(a) of Article 46.02 of the Texas Code of Criminal Procedure. “A person is incompetent to stand trial if the person does not have: (1) sufficient present ability to consult with the person’s lawyer with a reasonable degree of rational understanding; or (2) a rational as well as factual understanding of the proceedings against the person.”
- 84 Section 3(e) of Article 46.02 of the Texas Code of Criminal Procedure.
- 85 Section 4(a)(2) of Article 46.02 of the Texas Code of Criminal Procedure.
- 86 Article 46.03 of the Texas Code of Criminal Procedure.

- 87 Section 3(a) of Chapter 55 of the Texas Family Code.
- 88 Section 305(1) of Chapter 2 of the Utah Criminal Code.
- 89 Section 305(4) of Chapter 2 of the Utah Criminal Code.
- 90 Section 305(5) of Chapter 2 of the Utah Criminal Code.
- 91 Section 2 of Chapter 15 of the Utah Code of Criminal Procedure. Section 101(6) of Chapter 5 of the Utah Human Services Code defines "mentally retarded," in this context, to be: " a significant, subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested during the developmental period as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association."
- 92 Section 4801(a) of Title 13, Chapter 157 of the Vermont Statutes.
- 93 Section 4817(2) of Title 13, Chapter 157 of the Vermont Statutes.
- 94 Section 182.2 of Title 19.2, Chapter 11.1 of the Code of Virginia.
- 95 Section 50 of Title 10, Chapter 10-77 of the Revised Code of Washington.
- 96 Section 10(14) of Title 10, Chapter 10-77 of the Revised Code of Washington.
- 97 Section 10 of Title 9A, Chapter 9A-12 of the Revised Code of Washington.
- 98 Section 70 of Title 10, Chapter 10-95 of the Revised Code of Washington. The statute also defines: (1) "general intellectual functioning" to mean the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning; (2) "significantly subaverage general intellectual functioning" to mean intelligence quotient seventy or below; (3) "adaptive behavior" to mean the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for his or her age; and (4) "developmental period" to mean the period of time between conception and the eighteenth birthday.
- 99 Section 1(a) of Chapter 27, Article 6A of the West Virginia Code.
- 100 Section 3 of Chapter 27, Article 6A of the West Virginia Code.
- 101 Section 971.15 of the Wisconsin Statutes Annotated.
- 102 Section 971.165 of the Wisconsin Statutes Annotated.
- 103 Section 304(a) of Title 7, Chapter 11 of the 2001 Wyoming Statutes.
- 104 Section 302(a) of Title 7, Chapter 11 of the 2001 Wyoming Statutes.
- 105 Section 301(a)(iii) of Title 7, Chapter 11 of the 2001 Wyoming Statutes.
- 106 Section 102(j)(ii) of Title 6, Chapter 2 (Wyoming Criminal Code of 1982) of the 2001 Wyoming Statutes.











## FINAL RESEARCH BIBLIOGRAPHY

### I. Background

University of Kansas (KU) research staff are collecting and analyzing information in order to carry out a series of interrelated policy research tasks concerning the term “mental retardation” (and alternative terms to describe the same characteristics) that are outlined in a July 2001 *Agreement for Cooperative Research* entered into between Resource Network International and KU. These policy research activities focus on how the term is used and defined in the professional literature, in the operation of government programs and activities and by the broader culture. The *Agreement for Cooperative Research* calls for KU research staff to collect and analyze information in order to explore six interrelated policy research topics:

- ! How is the term “mental retardation” currently defined in diagnostic manuals, research reports and textbooks and by national data-gathering entities?
- ! To what extent is a diagnosis of “mental retardation” currently used to determine the eligibility of individuals for child or adult services? What other terms are currently used in such manuals, reports and textbooks and by national data-gathering entities to identify the same population or to “diagnose” or identify the same characteristics?
- ! Over the last decade, what are the trends (generally and in textbooks and research articles) in the use (including in relationship to both prognosis and diagnosis) and definition of the term “mental retardation”? What factors appear to have influenced changes in the use or definition of the term?
- ! How does the current use of the term “mental retardation” in the United States compare with the terminology used in other countries and by international organizations to describe the same population and characteristics?
- ! How and to what extent is the label “mentally retarded” viewed as pejorative within the general culture and media, by service professionals and by consumers and their families?
- ! What federal and state policy shifts have occurred over the last 20 years in the use or definition of the term “mental retardation” in each of the following contexts? To what extent have Congress and the states permitted or mandated the use of other terms to describe the same population or characteristics in these contexts?
  - ! Citizenship and legal status
    - ! Civil and criminal justice
    - ! Early care and education
    - ! Training and employment
    - ! Income support
    - ! Health care

As a first step in undertaking this overall policy research effort,<sup>1</sup> KU research staff have developed a working bibliography to help structure future policy research activities. This document presents that bibliography and describes key decisions that were made by KU research staff in its design and formulation.

### II. Further Definition of Research Topics

In order to design a working research bibliography for the project, the policy research topics described in the *Agreement for Cooperative Research* were first carefully analyzed to determine whether further definition was needed. This analysis revealed the need for further task definition in three important areas:

- ! The specific “child or adult services” to be studied;
- ! The particular aspects of citizenship, legal status and criminal justice to be explored in depth; and
- ! The terms other than “mental retardation” and “mentally retarded” that are used to identify the same population or to “diagnose” or identify the same characteristics.

#### ***A. Which Child and Adult Services?***

The *Agreement for Cooperative Research* refers generally to the use of the term “mental retardation” in connection with determining “the eligibility of individuals for child or adult services.” Based on a preliminary review of both the current research literature and relevant government programs, KU research staff have defined the term “child or adult services” to include:

- ! Early care;<sup>2</sup>
- ! Elementary, secondary and higher education;<sup>3</sup>
- ! Training and employment;<sup>4</sup>
- ! Income support;<sup>5</sup> and
- ! Health care.<sup>6</sup>

#### ***B. What Aspects of Citizenship, Legal Status and Criminal Justice?***

Based on our review of both the current research literature and relevant government programs KU research staff have identified six important aspects of citizenship, legal status and criminal justice for in depth exploration:

- ! Immigration status and eligibility for citizenship;
- ! Eligibility for Federal voting and military service;
- ! Federal non-discrimination and equal opportunity protections;
- ! Involuntary termination of parental rights under state law;
- ! Legal competence or capacity under state law; and
- ! Criminal responsibility, competence to stand trial and sentencing.

#### ***C. Which “Alternative” Terms?***

While the terms “mental retardation,” “mentally retarded” and “retarded” occur both in the professional literature and in the structure of government programs and activities, other terms are frequently used to identify individuals with the same or similar characteristics. Some of these terms are intended to be synonymous while others are clearly over-inclusive. Based on our review of both the current research literature and relevant government programs, KU research staff identified the following terms as being synonymous (or roughly synonymous) to the term “mental retardation” [“mentally retarded”]:

- ! Mental deficiency [mentally deficient];
- ! Mental disability or handicap [mentally disabled, mentally handicapped];<sup>7</sup>
- ! Intellectual disability [intellectually disabled, intellectually impaired]; and

! Organic mental disorder.

Based on the same review, KU research staff have identified the following terms as being over-inclusive (i.e., includes all persons with mental retardation along with others):

- ! Disability and handicap [disabled, handicapped and exceptional];
- ! Mental disorder or defect, mental disability or handicap<sup>8</sup> [mentally defective, mentally disabled, mentally handicapped];
- ! Developmental disability or delay [developmentally disabled and developmentally delayed]; and
- ! Learning impairment, learning handicap and learning difficulty [learning disabled and learning impaired].

For purposes of revising research bibliography, KU research staff have elected to use all of the “alternative terms” that have been identified as synonymous with the term “mental retardation” [“mentally retarded”] and the term “developmental disability.”<sup>9</sup>

### **III. Primary Research Questions**

Based on these decisions further defining the scope and focus of project research, KU research staff identified five primary areas (and related research questions) for further investigation:<sup>10</sup>

- (1) How is the term “mental retardation”<sup>11</sup> currently defined in diagnostic manuals, textbooks, professional journals and other publications (including government reports and surveys)? What alternative terms<sup>12</sup> are currently used to identify the same population or to “diagnose” or identify the same characteristics?
  - ! Mental deficiency
  - ! Mental disability or mental handicap<sup>13</sup>
  - ! Intellectual disability
    - ! Organic mental disorder
    - ! Developmental disability or delay

Over the last decade, what are the trends in the use (including in relationship to both prognosis and diagnosis) and definition of the term “mental retardation”? What factors appear to have influenced changes in the use or definition of the term “mental retardation.”?

- (2) To what extent is a diagnosis of “mental retardation” currently used to determine the eligibility of individuals for child or adult services?
  - (a) To what extent has Congress or Federal agencies permitted or mandated the use of alternative terms<sup>14</sup> for these purposes?
  - (b) To what extent have the states permitted or mandated the use of alternative terms<sup>15</sup> in connection with the administration of state special education and general assistance programs?

Over the last two decades, what are the policy shifts that have occurred in the use and definition of the term “mental retardation” and of alternative terms? What factors appear to have influenced these shifts?

- (3) To what extent does a diagnosis of “mental retardation” (or alternative term)<sup>9</sup> determine important aspects of citizenship, legal status and criminal justice?

- (4) How does the current use of the term “mental retardation” in the United States compare with the terminology used in other countries and by international organizations to describe the same population and characteristics?
- (5) How and to what extent is the label “mentally retarded” viewed as pejorative within the general culture and media, by service professionals and by consumers and their families?

#### IV. The Revised Bibliography

KU research staff have revised the preliminary research bibliography based on an in-depth review of both the current research literature and relevant government programs. Most of these research documents have been reviewed by KU research staff in terms of their relevance, probative value and reliability with respect to each of the primary research questions. This Revised Research Bibliography will be regularly updated and a *Final Research Bibliography* will be included with both the *Research Summaries* and the *Final Project Report* to be prepared by KU research staff.

#### A. THE USE OR DEFINITION OF TERMS IN THE PROFESSIONAL LITERATURE

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## 6. Professional Journals

- ! Advances in Special Education
- ! American Journal of Mental Deficiency
- ! American Journal of Orthopsychiatry
- ! American Journal on Mental Retardation
- ! American Psychologist (The)
- ! Analysis and Intervention in Developmental Disabilities
- ! Applied Psychological Measurement
- ! Applied Research in Mental Retardation
- ! Behavior Modification
- ! Behavior Therapy
- ! Behavioral Disorders
- ! Behavioral Interventions
- ! Behavioral Neuroscience
- ! Behavioral Residential Treatment
- ! Brain
- ! Career Development for Exceptional Individuals
- ! Child and Family Behavior Therapy
- ! Child Development
- ! Cognitive Therapy and Research

- ! Developmental Medicine and Child Neurology
- ! Developmental Psychology
- ! Disability
- ! Education and Training in Mental Retardation
- ! Education and Training of the Mentally Retarded
- ! Education and Treatment of Children
- ! Education and Training in Mental Retardation and Developmental Disabilities
- ! Exceptional Children
- ! Focus on Autism and Other Developmental Disabilities
- ! Focus on Exceptional Children
- ! Journal of Abnormal Psychology
- ! Journal of Abnormal Child Psychology
- ! Journal of Applied Psychology
- ! Journal of Applied Behavior Analysis
- ! Journal of Autism and Developmental Disorders
- ! Journal of Behavioral Education
- ! Journal of Behavior Therapy and Experimental Psychiatry
- ! Journal of Child Psychology and Psychiatry and Allied Disciplines
- ! Journal of Clinical Child Psychology
- ! Journal of Community Psychology
- ! Journal of Consulting and Clinical Psychology
- ! Journal of Family Psychology
- ! Journal of Learning Disabilities
- ! Journal of Mental Deficiency Research
- ! Journal of Pediatric Psychology
- ! Journal of Rehabilitation (The)
- ! Journal of Special Education
- ! Journal of the American Academy of Child and Adolescent Psychiatry
- ! Journal of the Association for Persons with Severe Handicaps (JASH)
- ! Mental Retardation
- ! Mental Retardation and Developmental Disabilities Research Reviews
- ! Multivariate Behavioral Research
- ! Perceptual and Motor Skills
- ! Psychological Assessment
- ! Psychological Bulletin
- ! Psychological Record (The)
- ! Psychological Reports
- ! Psychological Review
- ! Psychopharmacology Bulletin
- ! Rehabilitation Counseling Bulletin
- ! Rehabilitation Literature
- ! Rehabilitation Psychology
- ! Remedial and Special Education
- ! Research in Developmental Disabilities
- ! Teaching Exceptional Children
- ! Topics in Early Childhood Special Education

#### **B. THE USE OR DEFINITION OF TERMS IN GOVERNMENT PROGRAMS**

KU research staff will review Federal laws, regulations and policies (and related judicial decisions) that address government services and benefits in each of the areas listed below. State laws and regulations related to special education and State general assistance programs will also be reviewed.

- (1) **Early Care**: The early childhood education programs receiving support under the IDEA;<sup>2</sup>
- (2) **Public and Higher Education**: Special education programs receiving support under the IDEA and State special education laws and regulations;
- (3) **Training and Employment**: The training programs receiving support under WIA,<sup>3</sup> including the Vocational Rehabilitation program;<sup>4</sup>
- (4) **Income Support**: The Supplemental Security Income (SSI) program,<sup>5</sup> the Social Security Disability Insurance program (SSDI),<sup>6</sup> and State general assistance programs;<sup>7</sup> and
- (5) **Health Care**: The Medicaid Home and Community Based Waiver program.<sup>8</sup>

### C. THE USE OR DEFINITION OF TERMS RELATED TO CITIZENSHIP, LEGAL

#### STATUS AND CRIMINAL JUSTICE

- (1) **Immigration status and eligibility for citizenship**: The Immigration and Nationality Act;
- (2) **Eligibility for Federal voting and military service**: The National Voter Registration Act of 1993, the Voting Accessibility for the Elderly And Handicapped Act and the Voting Rights Act of 1965;
- (3) **Federal non-discrimination and equal opportunity protections**: The Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973, the Civil Rights of Institutionalized Persons Act of 1980, the Fair Housing Act, the Telecommunications Act of 1996 and the Air Carrier Access Act;
- (4) **Involuntary termination of parental rights under state law**;
- (5) **Legal competence or capacity under state law**: State laws authorizing the appointment of guardians and conservators and the conduct of protective proceedings; and
- (6) **Criminal responsibility, competence to stand trial and sentencing**: State laws addressed to criminal responsibility and culpability, competence to stand trial (incompetency) and sentencing (e.g., death penalty).

### D. THE USE OR DEFINITION OF TERMS OUTSIDE THE UNITED STATES

#### 1. **In Professional Journals**

- ! Acta Comportamentalia
- ! Acta Psychiatrica Scandinavica
- ! Análisis y Modificación de Conducta
- ! British Journal of Medical Psychology
- ! British Journal of Social Work
- ! British Journal of Psychology
- ! British Journal of Learning Disabilities
- ! British Journal of Psychiatry (The)
- ! British Journal of Mental Subnormality
- ! British Medical Journal
- ! Canadian Journal of Occupational Therapy
- ! Canadian Journal of Psychiatry
- ! International Journal of Psychiatry in Medicine

- ! International Journal of Rehabilitation Research
- ! International Review of Psychiatry
- ! International Review of Research in Mental Retardation
- ! Journal of Applied Research in Intellectual Disability
- ! Journal of Intellectual Disability Research
- ! Psychometrika

## 2. **By International Organizations**

- ! Australian Society for the Study of Intellectual Disability (ASSID)
- ! Inclusion International
- ! Information Resources for People with Disabilities in JAPAN
- ! International Labor Organization (ILO)
- ! International Journal of Disability, Development and Education
- ! International Association for the Scientific Study of Intellectual Disabilities
- ! International Recovery Hospital for Mentally Retarded Children
- ! Japanese School for the Mentally Retarded
- ! Japanese National Committee of International Council on Social Welfare (JNC/ICSW)
- ! Mental Disability Rights International (MDRI)
- ! Organization for Economic Cooperation and Development (OECD)
- ! Royal College of Nursing (United Kingdom)
- ! United Nations Educational, Social and Cultural Organization (UNESCO)
- ! United Nations
- ! World Health Organization (WHO)

## E. THE PERCEPTION OF THE TERM

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## Notes

- <sup>1</sup> A *Project Work Plan* describing each of the specific activity tasks to be carried out by KU research staff (including the preparation of a research bibliography) was included as Attachment A to the *Agreement for Cooperative Research*.
- <sup>2</sup> Including services provided under the Individuals with Disabilities Education Act, Head Start, and the Child Care and Development Block Grant.
- <sup>3</sup> Including services provided under the Individuals with Disabilities Education Act, state special education programs, and Federal vocational and adult education programs.
- <sup>4</sup> Including services under the Vocational Rehabilitation program and the Workforce Investment Act.
- <sup>5</sup> Including assistance provided under the Social Security Disability Insurance program, the Supplemental Security Income program and by state general assistance programs.
- <sup>6</sup> Including services and/or assistance provided under the Medicare and Medicaid programs.
- <sup>7</sup> These terms are used in several state special education laws and regulations as a true synonym for the term “mentally retarded.”
- <sup>8</sup> Outside of the special education context, these terms, as used generally, are over-inclusive of the term “mental retardation.”
- <sup>9</sup> Despite the fact that the term as most often used is clearly over-inclusive of the term “mentally retarded,” we have elected to include it because of it has been frequently suggested as a substitute term.”
- <sup>10</sup> As is outlined in the *Project Work Plan*, research summaries will be subsequently prepared by KU research staff for each of these primary research questions.
- <sup>11</sup> Research related to the use, definition or impact of the noun, “mental retardation,” will also encompass the use definition or impact of the adjective, “mentally retarded.”
- <sup>12</sup> Research related to the use of alternative terms will include both the noun and adjectival forms of the term (e.g., “developmental disability” and “developmentally disabled” and “developmentally delayed”).
- <sup>13</sup> This term will be researched within the context of state special education laws and regulations. Outside of this area, the term is used generally in an over-inclusive manner that is, thus, outside of the scope of this investigation.
- <sup>14</sup> Other terms to describe the same population or characteristics in these contexts. E.g., “mental deficiency,” “mental disability,” “developmental disability”, “intellectual disability.”
- <sup>15</sup> Other terms to describe the same population or characteristics in these contexts. E.g., “mental deficiency,” “mental disability,” “developmental disability”, “intellectual disability.”
- <sup>16</sup> This category includes survey or interviews conducted by national data-gathering organizations.
- <sup>17</sup> The Individuals with Disabilities Education Act of 1997, as amended.
- <sup>18</sup> The Workforce Investment Act of 1998, as amended.
- <sup>19</sup> Operated under the Rehabilitation Act of 1973, as amended.
- <sup>20</sup> Title XVI of the Social Security Act, as recently amended by the *Ticket to Work and Work Incentives Improvement Act of 1999*.
- <sup>21</sup> Title II of the Social Security Act, as recently amended by the *Ticket to Work and Work Incentives Improvement Act of 1999*.
- <sup>22</sup> A *General Assistance (GA)* program is a cash and in-kind assistance program that: (1) is financed and administered entirely by the state, county, or locality in which it operates; (2) is designed to meet the

short-term or ongoing needs of low-income persons ineligible for (or awaiting approval for) federally funded cash assistance; (3) provides assistance for at least two consecutive months. While this definition includes *interim assistance*, it does not include state-segregated or state-separate TANF programs.

- <sup>23</sup> Title XIX of the Social Security Act, as amended, including both the Long-term Care and Home and Community-Based Services Waiver programs.

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- <sup>1</sup>. Other terms to describe the same population or characteristics in these contexts. E.g., “mental deficiency,” “mental disability,” “developmental disability,” “intellectual disability.”
  - <sup>2</sup>. The Individuals with Disabilities Education Act of 1997, as amended.
  - <sup>3</sup>. The Workforce Investment Act of 1998, as amended.
  - <sup>4</sup>. Operated under the Rehabilitation Act of 1973, as amended.
  - <sup>5</sup>. Title XVI of the Social Security Act, as recently amended by the *Ticket to Work and Work Incentives Improvement Act of 1999*.
  - <sup>6</sup>. Title II of the Social Security Act, as recently amended by the *Ticket to Work and Work Incentives Improvement Act of 1999*.
  - <sup>7</sup>. Title XIX of the Social Security Act, as amended.
  - <sup>8</sup>. A *General Assistance (GA)* program is a cash and in-kind assistance program that: (1) is financed and administered entirely by the state, county, or locality in which it operates; (2) is designed to meet the short-term or ongoing needs of low-income persons ineligible for (or awaiting approval for) federally funded cash assistance; (3) provides assistance for at least two consecutive months. While this definition includes *interim assistance*, it does not include state-segregated or state-separate TANF programs.
  - <sup>9</sup>. The term “mental retardation” also occurs in Section 673(e)(1) of IDEA 97 in the context of “authorized activities” related to “high-incidence disabilities:” “(1) IN GENERAL- In carrying out this section, the Secretary shall support activities, consistent with the objectives described in subsection (a), to benefit children with high-incidence disabilities, such as children with specific learning disabilities, speech or language impairment, or mental retardation.”
  - <sup>10</sup>. 34 CFR 300.
  - <sup>11</sup>. 34 CFR 300.7(a)(1).
  - <sup>12</sup>. 34 CFR 300.7(c)(6).
  - <sup>13</sup>. 34 CFR 300.7(c)(7).
  - <sup>14</sup>. 34 CFR 300.7(c)(10).
  - <sup>15</sup>. 34 CFR 300.541(b).
  - <sup>16</sup>. 34 CFR 300.7(b).
  - <sup>17</sup>. 34 CFR 300.313(a)(1)(2).
  - <sup>18</sup>. 34 CFR 300.313(a)(3).
  - <sup>19</sup>. 34 CFR 300.313(a)(4).
  - <sup>20</sup>. 34 CFR 300.313(b)(1).
  - <sup>21</sup>. 34 CFR 300.313(c).
  - <sup>22</sup>. 34 CFR 303.

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<sup>23</sup> 34 CFR 303.16(a).

<sup>24</sup> The phrase “a diagnosed physical or mental condition that has a high probability of resulting in developmental delay,” as used in paragraph (a)(2) of this section, applies to a condition if it typically results in developmental delay. Examples of these conditions include chromosomal abnormalities; genetic or congenital disorders; severe sensory impairments, including hearing and vision; inborn errors of metabolism; disorders reflecting disturbance of the development of the nervous system; congenital infections; disorders secondary to exposure to toxic substances, including fetal alcohol syndrome; and severe attachment disorders.

<sup>25</sup> 34 CFR 303.10 and 303.300. With respect to paragraph (b) of this section, children who are at risk may be eligible under this part if a State elects to extend services to that population, even though they have not been identified as disabled. Under this provision, States have the authority to define who would be “at risk of having substantial developmental delays if early intervention services are not provided.” In defining the “at risk” population, States may include well-known biological and environmental factors that can be identified and that place infants and toddlers “at risk” for developmental delay. Commonly cited factors include low birth weight, respiratory distress as a newborn, lack of oxygen, brain hemorrhage, infection, nutritional deprivation, and a history of abuse or neglect. It should be noted that “at risk” factors do not predict the presence of a barrier to development, but they may indicate children who are at higher risk of developmental delay than children without these problems.

<sup>26</sup> 34 CFR 300.7(c)(1)(i).

<sup>27</sup> Full implementation of WIA by all states was required by July 2000. WIA requires States to integrate the different program streams in order to establish a comprehensive, coordinated and accountable system for providing needed services and supports to youth and adults with disabilities.

<sup>28</sup> These “core services” are: (1) determination of eligibility of services; (2) outreach, intake and orientation to the *One-Stop* system; (3) initial assessment; (4) job search and placement assistance, and career counseling; (5) provision of information; (6) assistance in establishing eligibility for Welfare-to- Work and financial aid assistance; and (7) follow-up services.

<sup>29</sup> These “intensive services” include: (1) comprehensive and specialized assessments of skill levels; (2) development of an individual employment plan; (3) group counseling; (4) individual counseling and career planning; (5) case management; and (6) short-term pre-vocational services including comprehensive and specialized assessments of skill levels; development of an individual employment plan; group and individual counseling; career planning; case management; and short-term pre-vocational services.

<sup>30</sup> Section 188 of the Workforce Investment Act of 1998, and 29 CFR Part 37.

<sup>31</sup> Basic VR eligibility requirements are: (1) a determination that the applicant has a physical or mental impairment; (2) a determination that the applicant’s physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant; (3) a presumption that the applicant can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. 34 CFR 361.42(a).

<sup>32</sup> 34 CFR 361.36 (c)(3).

<sup>33</sup> 34 CFR 361.5(b)(28).

<sup>34</sup> The SSDI program provides for payment of disability benefits to individuals who are “insured” under the Act by virtue of their contributions to the Social Security trust fund through the Social Security tax on their earnings, as well as to certain disabled dependents of insured individuals.

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- <sup>35.</sup> The SSI program provides payments to individuals (including children under age 18) who are disabled and have limited income and resources.
- <sup>36.</sup> Most of the listed impairments are permanent or expected to result in death, or a specific statement of duration is made. For all others, the evidence must show that the impairment has lasted or is expected to last for a continuous period of at least 12 months.
- <sup>37.</sup> The medical criteria in part A may also be applied in evaluating impairments in persons under age 18 if the disease processes have a similar effect on adults and younger persons. Part B contains additional medical criteria that apply only to the evaluation of impairments of persons under age 18. In evaluating disability for a person under age 18, part B will be used first.
- <sup>38.</sup> *Disability Evaluation Under Social Security*. SSA Pub. No. 64-039, January 2001, §12.00.
- <sup>39.</sup> Part A of the Listings contains medical criteria that apply to adults age 18 and over.
- <sup>40.</sup> A medically determinable physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques.
- <sup>41.</sup> *Disability Evaluation Under Social Security, op. cit.*, §12.05.
- <sup>42.</sup> Paragraphs A and B contain criteria that describe disorders that are severe enough to prevent any gainful activity without the need for any additional assessment of functional limitations.
- <sup>43.</sup> This paragraph provides a basis for demonstrating eligibility where the results of standardized intelligence tests are unavailable, e.g., where their condition precludes formal standardized testing.
- <sup>44.</sup> *Activities of daily living* include adaptive activities such as cleaning, shopping, cooking, taking public transportation, paying bills, maintaining a residence, caring appropriately for your grooming and hygiene, using telephones and directories, and using a post office. The quality of these activities is assessed in terms of their independence, appropriateness, effectiveness, and sustainability. *Social functioning* refers to the capacity to interact independently, appropriately, effectively, and on a sustained basis with other individuals, and includes the ability to get along with others. *Concentration, persistence and pace* refers to the ability to sustain focused attention and concentration sufficiently long to permit the timely and appropriate completion of tasks commonly found in work settings. These limitations may be assessed through clinical examination or psychological testing. *Episodes of decompensation* are exacerbations or temporary increases in symptoms or signs accompanied by a loss of adaptive functioning, as manifested by difficulties in performing activities of daily living, maintaining social relationships, or maintaining concentration, persistence, or pace.
- <sup>45.</sup> IQ tests that are wide in scope, include items that test both verbal and performance abilities, and have appropriate validity, reliability, and norms should be used. These tests must be individually administered by a qualified specialist (i.e., a person currently licensed or certified in the State to administer, score, and interpret psychological tests) with appropriate training and experience. The narrative report that accompanies the test results should comment on whether the IQ scores are considered valid and consistent with the developmental history and the degree of functional limitation.
- <sup>46.</sup> The specific IQ score ranges listed above reflect values from tests of general intelligence that have a mean of 100 and a standard deviation of 15 (e.g., the Wechsler series). In cases where more than one IQ is customarily derived from the test administered (e.g., verbal, performance, and full scale IQs), the lowest score is used. IQs obtained from standardized tests that deviate from a mean of 100 and a standard deviation of 15 require conversion to a percentile rank. In special circumstances, such as the assessment of individuals with sensory,

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motor, or communication abnormalities, or those whose culture and background are not principally English-speaking, measures such as the Test of Nonverbal Intelligence, Third Edition (TONI-3), Leiter International Performance Scale-Revised (Leiter-R), or Peabody Picture Vocabulary Test-Third Edition (PPVT-III) may be used.

<sup>47.</sup> Sources of information about functioning include professional health care providers, records from work evaluations and rehabilitation progress notes.

<sup>48.</sup> *Disability Evaluation Under Social Security, op. cit.*, §12.02.

<sup>49.</sup> *Disability Evaluation Under Social Security, op. cit.*, §§10.00 and 10.06.

<sup>50.</sup> Not including other chromosomal abnormalities such as mosaic Down syndrome, fragile X syndrome, phenylketonuria, and fetal alcohol syndrome, which produce a pattern of multiple impairments but manifest in a wide range of impairment severity.

<sup>51.</sup> Documentation must include confirmation of a positive diagnosis by a clinical description of the usual abnormal physical findings associated with the condition and definitive laboratory tests, including chromosomal analysis. Medical evidence that is persuasive that a positive diagnosis has been confirmed by appropriate laboratory testing, at some time prior to evaluation, is acceptable in lieu of a copy of the actual laboratory report.

<sup>52.</sup> Part B of the Listings contains medical criteria that apply to children below the age of 18 where criteria in Part A do not give appropriate consideration to the particular disease process in childhood.

<sup>53.</sup> There are significant differences between the listings for adults and the listings for children. There are disorders found in children that have no real analogy in adults; hence, the differences in the diagnostic categories for children. The presentation of mental disorders in children, particularly the very young child, may be subtle and of a character different from the signs and symptoms found in adults. The activities appropriate to children, such as learning, growing, playing, maturing, and school adjustment, are also different from the activities appropriate to the adult and vary widely in the different childhood stages.

<sup>54.</sup> *Disability Evaluation Under Social Security, op. cit.*, §112.05.

<sup>55.</sup> Paragraphs A, B and C contain criteria that describe disorders that are severe enough to prevent any gainful activity without the need for any additional assessment of functional limitations. For Paragraphs D and F, the degree of functional limitation the additional impairment(s) imposes will be assessed to determine if it causes more than minimal functional limitations. If so, the additional impairment(s) will be found to impose an additional and significant limitation of function.

<sup>56.</sup> After 36 months, motor function is no longer felt to be a primary determinant of mental function.

<sup>57.</sup> Social function in older infants and toddlers is measured in terms of the development of relatedness to people (e.g., bonding and stranger anxiety) and attachment to animate or inanimate objects.

<sup>58.</sup> When standardized tests of social or cognitive function and adaptive behavior are used as the measure of functional parameters, a valid score that is two standard deviations below the norm for the test will be considered a marked restriction.

<sup>59.</sup> Personal functioning in preschool children pertains to self-care; i.e., personal needs, health, and safety. Development of self-care skills is measured in terms of the child's increasing ability to help himself/herself and to cooperate with others in taking care of these needs.

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<sup>60.</sup> As documented by an appropriate standardized test or other medical findings.

<sup>61.</sup> I.e, From birth to the attainment of age 1.

<sup>62.</sup> *Disability Evaluation Under Social Security, op. cit.*, §112.12.

<sup>63.</sup> Section 1905 (a) of the Social Security Act (42 U.S.C. 1396d), and 42 CFR 435.540-541. Some States use more restrictive Medicaid eligibility requirements than pre-date SSI.

<sup>64.</sup> Medicare beneficiaries who have low incomes and limited resources may also receive help from the Medicaid program. For such persons who are eligible for full Medicaid coverage, the Medicare health care coverage is supplemented by services that are available under their State's Medicaid program, according to eligibility category. According to the Medicare law, disabled- and-working individuals who previously qualified for Medicare because of disability, but who lost entitlement because of their return to work (despite the disability), are allowed to purchase Medicare coverage. If these persons have incomes below 200 percent of the poverty level but do not meet any other Medicaid assistance category, they may qualify to have Medicaid pay their Medicare premiums as Qualified Disabled and Working Individuals.

<sup>65.</sup> 42 CFR 440.150.

<sup>66.</sup> 42 CFR 441.303. The populations served through the waiver program have also changed since the implementation of the program. Originally, the waiver program was composed exclusively of A/D, MR/DD, and combined A/D and MR/DD programs. As changes in regulations have allowed the waivers to serve other populations, including children with special health needs, adults and children with AIDS, and people with traumatic brain injuries (TBI), the number of states implementing such programs has increased. The number of waiver programs serving people with chronic mental illness has not increased and the mental health waivers currently operating serve children.

<sup>67.</sup> The Social Security Act specifically lists seven services which may be provided in HCBS waiver programs: (1) case management (services which assist individuals access needed medical, social, educational, and other services); (2) homemaker/home health aide services: (assistance with general household activities and ongoing monitoring of the well being of the individual; assistance with specific health problems provided by a health care professional); (3) personal care services: (direct supervision and assistance in daily living skills and activities (e.g., assisting the individual with bathing and groom-ing); (4) adult day health: (adult day care setting which provides more health-related services); (5) habilitation: (services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community based settings; and includes pre-vocational, educational, and supported employment); (6) respite care: (short-term supervision, assistance, and care provided due to the temporary absence or need for relief of recipient's primary care-givers. This may include overnight, in-home or out-of-home services); and (7) other services needed to avoid being placed in a medical facility. The law further permits day treatment or other partial hospitalization services, psycho-social rehabilitation services, and clinic services (whether or not furnished in a facility) for individuals with chronic mental illness.

<sup>68.</sup> LeBlanc, A. J., Tonner, M. C. and C. Harrington. (Winter 2000). "Medicaid 1915(c) Home and Community-Based Services Waivers Across the States." Health Care Financing Review, 22, 2, 163.

<sup>69.</sup> Lutzky, S., Alexih, L. B. , Duffy, J. and C. Neill. (June 15, 2000). Review of the Medicaid 1915(c) Home and Community Based Services Waiver Program Literature and Program Data: Final Report. The Lewin Group, pp. 14-16.

<sup>70.</sup> 42 CFR 483.102 (b)(3).

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- <sup>71.</sup> 42 CFR 435.1009.
- <sup>72.</sup> Letter from the Director, Center for Medicaid and State Operations to State Medicaid Directors dated January 10, 2001 (SMDL #01-006 - Olmstead Update No: 4).
- <sup>73.</sup> The Education for All Handicapped Children Act of 1975, later amended (P.L. 101-476 and P. L. 105-17) and recodified as the Individuals with Disabilities Education Act (IDEA).
- <sup>74.</sup> 34 CFR 300.7(c)(6): “Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.”
- <sup>75.</sup> 34 CFR 300.7(b): “Children aged 3 through 9 experiencing developmental delays. The term ‘child with a disability’ for children aged 3 through 9 may, at the discretion of the State and LEA and in accordance with §300.313, include a child - (1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (2) Who, by reason thereof, needs special education and related services.”
- <sup>76.</sup> Regulations adopting the terms “mental retardation” and “developmentally delayed” are pending.
- <sup>77.</sup> As used in the South Carolina special education statute.
- <sup>78.</sup> As used in the South Carolina special education regulations.
- <sup>79.</sup> Includes the District of Columbia.
- <sup>80.</sup> 34 CFR 300.7(c)(6).
- <sup>81.</sup> Section 16-39-2(4) of the Code of Alabama.
- <sup>82.</sup> Section 130(b) of the Alaska Administrative Code.
- <sup>83.</sup> Section 1B of Article 4, Title 7 of the Arizona Administrative Code. Note, however, that Section 15-761(2)(f) of the Arizona Revised Statutes refers to “mild, moderate or severe mental retardation” as a category of “children with disabilities.”
- <sup>84.</sup> Sections 206.1 and 608.5 of the Rules and Regulations Governing Special Education and Related Services of the Arkansas Department of Education.
- <sup>85.</sup> Section 3001 of Title 5, Division 1, Chapter 3 of the California Code of Regulations.
- <sup>86.</sup> Section 22-20-103(1.5) of the Colorado Revised Statutes.
- <sup>87.</sup> State of Connecticut. (2000). Guidelines for Identifying Children With Intellectual Disability/Mental Retardation. Hartford, CN: Connecticut Department of Education.
- <sup>88.</sup> Paragraph 4.9 of Chapter 925 of the Delaware Department of Education Regulations (The Administrative Manual for Special Education Services).
- <sup>89.</sup> Section 6A-6.03011 of the Administrative Rules of the Florida State Board of Education.
- <sup>90.</sup> *Ibid*. An educable mentally handicapped student is a student who is mildly impaired in intellectual and adaptive behavior and whose development reflects a reduced rate of learning. The measured intelligence of an educable mentally handicapped student generally falls between two (2) and three (3) standard deviations below

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the mean and the assessed adaptive behavior falls below that of other students of the same age and socio-cultural group.

<sup>91.</sup> *Ibid.* A trainable mentally handicapped student is a student who is moderately or severely impaired in intellectual and adaptive behavior and whose development reflects a reduced rate of learning. The measured intelligence of a trainable mentally handicapped student generally falls between three (3) and five (5) standard deviations below the mean and the assessed adaptive behavior falls below that of other students of the same age and socio-cultural group.

<sup>92.</sup> *Ibid.* A profoundly mentally handicapped student is a student who is profoundly impaired in intellectual and adaptive behavior and whose development reflects a reduced rate of learning. The measured intelligence of a profoundly mentally handicapped student generally falls below five (5) standard deviations below the mean and the assessed adaptive behavior falls below that of other students of the same age and socio-cultural group.

<sup>93.</sup> Section 160-4-7-02 (Appendix E) of the Rules of the Georgia State Board of Education Pertaining to Special Education (Exceptional Students).

<sup>94.</sup> *Ibid.* Mild intellectual disability is defined as: “(1) Intellectual functioning ranging between an upper limit of approximately 70 to a lower limit of approximately 55; and (2) Deficits in adaptive behavior that significantly limit an individual’s effectiveness in meeting the standards of maturation, learning, personal independence or social responsibility, and especially school performance that is expected of the individual’s age level and cultural group, as determined by clinical judgment.”

<sup>95.</sup> *Ibid.* Moderate intellectual disability is defined as: “(1) Intellectual functioning ranging from an upper limit of approximately 55 to a lower limit of approximately 40; and (2) Deficits in adaptive behavior that significantly limit an individual's effectiveness in meeting the standards of maturation, learning, personal independence or social responsibility, and especially school performance that is expected of the individual’s age-level and cultural group as determined by clinical judgment.”

<sup>96.</sup> *Ibid.* Severe intellectual disability is defined as: “(1) Intellectual functioning ranging from an upper limit of approximately 40 to a lower limit of approximately 25; and (2) Deficits in adaptive behavior that significantly limit an individual’s effectiveness in meeting the standards of maturation, learning, personal independence or social responsibility and especially school performance that is expected of the individual’s age-level and cultural group as determined by clinical judgment.”

<sup>97.</sup> *Ibid.* Profound intellectual disability is defined as: “(1) Intellectual functioning below approximately 25; and (2) Deficits in adaptive behavior that significantly limit an individual’s effectiveness in meeting the standards of maturation, learning, personal independence or social responsibility and especially school performance that is expected of the individual's age-level and cultural group, as determined by clinical judgment.”

<sup>98.</sup> Section 22 of Title 8, Chapter 56 of the Hawaii Administrative Rules.

<sup>99.</sup> Section 8(b)(iii) of the Administrative Rules of the Idaho State Board of Education.

<sup>100.</sup> Section 226.75 of Title 23 of the Illinois Administrative Code.

<sup>101.</sup> Section 9(a) of Title 511, Article 7, Rule 26 of the Indiana State Board of Education.

<sup>102.</sup> Section 9(c) of Title 511, Article 7, Rule 26 of the Indiana State Board of Education. “A student with a mild mental disability will generally exhibit: (1) measured intelligence two (2) or more standard deviations below the mean or average of the testing instrument used; and (2) an adaptive behavior profile within the range of a mild mental disability.”

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- <sup>103.</sup> Section 9(d) of Title 511, Article 7, Rule 26 of the Indiana State Board of Education. “A student with a moderate mental disability will generally exhibit: (1) measured intelligence three (3) or more standard deviations below the mean or average of the testing instrument used; and (2) an adaptive behavior profile within the range of a moderate mental disability.”
- <sup>104.</sup> Section 9(e) of Title 511, Article 7, Rule 26 of the Indiana State Board of Education. “A student with a severe mental disability will generally exhibit: (1) measured intelligence four (4) or more standard deviations below the mean or average of the testing instrument used; and (2) an adaptive behavior profile within the range of a severe mental disability.”
- <sup>105.</sup> Section 5 of Chapter 41 of Part 281 of the Iowa Administrative Code. “Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects an individual’s educational performance.”
- <sup>106.</sup> Kansas Administrative Regulations 91-40-1(oo).
- <sup>107.</sup> Section 200(1)(e) of Chapter 157 of the Kentucky Revised Statutes.
- <sup>108.</sup> Section 904 of Bulletin 1706 of the Louisiana State Board of Education.
- <sup>109.</sup> Section 3.7 of Chapter 101 of the Special Education Regulations of the Maine Department of Education. “Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behaviors and manifested during the developmental period that adversely affect the student's educational performance.”
- <sup>110.</sup> Section 3(B)(35) of Title 13A.05.01 of the Code of Maryland Agency Regulations.
- <sup>111.</sup> Section 28.02(7)(c) of Chapter 603 of the Code of Massachusetts Regulations.
- <sup>112.</sup> Michigan law and regulations do not define the overall term, “mentally impaired.”
- <sup>113.</sup> Rule 340.1705 of the Michigan Administrative Code.
- <sup>114.</sup> Rule 340.1704 of the Michigan Administrative Code.
- <sup>115.</sup> Rule 340.1703 of the Michigan Administrative Code.
- <sup>116.</sup> Section 1333(1) of Chapter 3525 of the Minnesota Rules.
- <sup>117.</sup> Sections 1333(2) and (3) of Chapter 3525 of the Minnesota Rules.
- <sup>118.</sup> Mississippi Department of Education, Proposed Policies and Procedures Regarding Children with Disabilities under IDEA Amendments of 1997 (Appendix A).
- <sup>119.</sup> The 2001 Missouri IDEA, Part B State Plan.
- <sup>120.</sup> Section 401(4) and (5) of Title 20, Chapter 7 of the Montana Code Annotated 2001.
- <sup>121.</sup> Section 3.07E of Title 92, Chapter 51 of the Nebraska Administrative Code.
- <sup>122.</sup> Section 55(1) of Chapter 388 of the Nevada Administrative Code.
- <sup>123.</sup> Section 2.9 of Chapter Ed 1100 of the Administrative Rules of the New Hampshire State Board of Education.

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- <sup>124.</sup> New Jersey statutes use the term “mentally retarded;” New Jersey regulations use the term “cognitively impaired.”
- <sup>125.</sup> Section 8 of Title 18A, Chapter 46 of the New Jersey Permanent Statutes. As used in this context, the term “mentally retarded” is not defined by the New Jersey statutes.
- <sup>126.</sup> Section 9(a) of Title 18A, Chapter 46 of the New Jersey Permanent Statutes.
- <sup>127.</sup> Section 9(b) of Title 18A, Chapter 46 of the New Jersey Permanent Statutes.
- <sup>128.</sup> Section 9(c) of Title 18A, Chapter 46 of the New Jersey Permanent Statutes.
- <sup>129.</sup> Section 3.5(c)(1) of Title 6A, Chapter 14 of the New Jersey Administrative Code.
- <sup>130.</sup> Section 7.5.5 of Title 6, Chapter 5, Part 2 of the Policies of the New Mexico Department of Education (1997).
- <sup>131.</sup> Section 200.1(zz)(7) of the Regulations of the New York Commissioner of Education (Policy 00-05). Significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student’s educational performance.
- <sup>132.</sup> Section 1501A(5) of the Procedures Governing Programs and Services for Children with Disabilities of the North Carolina State Board of Education.
- <sup>133.</sup> *Parent Guide to Special Education*, North Dakota Department of Public Instruction (August 1999).
- <sup>134.</sup> The term “cognitive disability” is used in the latest draft of amendments to the Ohio Administrative Code proposed by the State Department of Education.
- <sup>135.</sup> Rule 3301-51-01(N) of the Ohio Administrative Code. Rule 3301-51-01(b) of the Rules for the Education of Children with Disabilities 3-21 Years of Age, Ohio Department of Education (Draft 2.1): “‘Cognitive disability (mental retardation)’ means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child’s educational performance.” (i) “‘Significantly subaverage general intellectual functioning’ refers to an intelligence quotient of seventy or below as determined through a measure of cognitive functioning administered by a qualified psychologist using a test designed for individual administration. Based on a standard error of measurement and clinical judgement, a child may be determined to have significant subaverage general intellectual functioning with an intelligence quotient not to exceed seventy-five. (ii) ‘Deficits in adaptive behavior’ means deficits in two or more applicable skill areas occurring within the context of the child’s environments typical of the person’s age peers.”
- <sup>136.</sup> The term “mental retardation” is used in the latest draft of amendments to state special education regulations proposed by the Oklahoma State Department of Education.
- <sup>137.</sup> Sections 70-18-109.5(5) and (11) of the Oklahoma Statutes (for both “educable mentally handicapped” and “trainable mental handicapped”), and Draft Special Education Policies and Procedures Manual (May 2000) of the Oklahoma State Department of Education (for “mental retardation”).
- <sup>138.</sup> Section 3(f) of Oregon Administrative Rule 581-015-0005, last amended in 2000.
- <sup>139.</sup> Section 14.102(a)(2)(ii) of the Pennsylvania Code, adopted June 8, 2001, incorporating 34 CFR 300.7(a) and (c)), published at 64 FR 12418—12469 on March 12, 1999.

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- <sup>140.</sup> Section 300.7(6) of the Regulations of the Rhode Island Board of Regents for Elementary and Secondary Education Governing the Education of Children with Disabilities (December 2000).
- <sup>141.</sup> State regulations define “mental disability” to be: “mental retardation,” and in turn, define that term to mean: “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a student’s educational performance.”
- <sup>142.</sup> Regulations 43-243 (“Special Education, Education of Students with Disabilities”) and 43-243.1, (“Criteria for Entry into Programs of Special Education for Students with Disabilities”) of the South Carolina State Board of Education.
- <sup>143.</sup> Section 24.01(11) of Article 24:05 of the Rules of the South Dakota Board of Education.
- <sup>144.</sup> Section 1(15)(i) of Chapter 0520-1-9 of the Rulemaking Hearing Rules of the Tennessee State Board of Education.
- <sup>145.</sup> Section 89.1040(a)(c)(5) of Title 19 of the Texas Administrative Code, last amended in 2001.
- <sup>146.</sup> Section 1.E(23) of the Utah State Board of Education Special Education Rules. “Significantly below-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student’s educational performance.”
- <sup>147.</sup> Section 2362.1(a) of the Special Education Regulations of the Vermont Department of Education, Vermont State Board of Education Manual of Rules and Practices, effective August 2001.
- <sup>148.</sup> Section 10 of Title 8, Chapter 80 of the Virginia Administrative Code.
- <sup>149.</sup> Section 134 of Title 392, Chapter 392-172 of the Washington Administrative Code.
- <sup>150.</sup> Section 4.1.3(g) of Title 126, Series 16 of the Legislative Rules of the West Virginia State Board of Education.
- <sup>151.</sup> Section 11.36(1)(a) of Chapter PI 11 (Children with Disabilities) of the Wisconsin Administrative Code, effective July 2001.
- <sup>152.</sup> Section 6(h) of Chapter 7 of the Rules Governing Services for Children with Disabilities of the Wyoming Department of Education.
- <sup>153.</sup> The population eligible for general assistance varies considerably by state, but usually consists of those individuals ineligible or not yet qualified for SSI (e.g., an able-bodied individual or an individual with a disability not severe enough to qualify for SSI) and/or families and children categorically ineligible for TANE (e.g., a child living with an unrelated caretaker). A few states do provide General Assistance to all persons categorically ineligible for SSI or TANF.
- <sup>154.</sup> In order to distinguish General Assistance programs from emergency assistance programs.
- <sup>155.</sup> Interim assistance is financial assistance for persons waiting to become eligible for SSI or Social Security Disability Insurance (SSDI).
- <sup>156.</sup> Gallagher, L. J., Uccello, C., Pierce, A., & Reidy, E. (1999). State General Assistance Programs: 1998. Washington, DC: The Urban Institute.

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<sup>157</sup>. Six states have at least one county that has chosen to provide General Assistance without state involvement: Florida, Georgia, Kentucky, Montana, North Carolina and North Dakota. The remaining ten states have neither a state GA program or a local GA program: Alabama, Arkansas, Louisiana, Mississippi, Oklahoma, South Carolina, Tennessee, Texas, West Virginia, and Wyoming.

<sup>158</sup>. Alaska, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, Washington, and Wisconsin. Nebraska has a uniform state GA program for disabled individuals and also requires counties to provide General Assistance to needy residents not covered by the state GA program. Twenty-four of these states have statewide General Assistance programs with uniform eligibility rules; nine do not have uniform state GA programs, but require all counties to provide General Assistance. The two remaining states, Wisconsin and Virginia, do not provide statewide assistance, but do provide supervision and funding for counties that choose to have a program.

<sup>159</sup>. Section 63 of Title 37, Chapter 23 of the Mississippi Laws.

<sup>1</sup> 8 U.S.C. 1182(a).

<sup>2</sup> 8 U.S.C. 1182(a)(1)(A)(iii).

<sup>3</sup> 8 U.S.C. 1252(a) and (b).

<sup>4</sup> 8 U.S.C. 1182(a)(1)(B) and 1182(b).

<sup>5</sup>“The medical report shall contain: For an alien with a past history of mental illness, the medical report shall also contain available information on which the United States Public Health Service can base a finding as to whether the alien has been free of such mental illness for a period of time, sufficient in the light of such history, to demonstrate recovery.” INS Form I-601.

<sup>6</sup> INS Form I-601.

<sup>7</sup> Federal Register, March 19, 1999.

<sup>8</sup> 42 U.S.C. § 1973gg-5(a)(2).

<sup>9</sup> 42 U.S.C. § 1973gg-5(a)(4)(A). Certain other offices may, but do not have to be, designated as voter registration agencies, including public libraries, public schools, unemployment compensation offices, disability services offices other than the mandatory agencies, federal offices and non-governmental offices. 42 U.S.C. § 1973gg-5(a)(3). Disability services offices that have been designated as voter registration agencies include state and county offices of mental health and *mental retardation*, blindness and visual services offices, veterans' affairs offices, health department offices, labor department offices, aging department offices, and alcohol and substance abuse offices. Some states appear to be implementing the NVRA only for certain groups of citizens with disabilities. See, e.g., Ga. Stat. 21-2-222(a), limiting "persons with disabilities" for purposes of designating voter registration offices under the NVRA to individuals with physical disabilities.

<sup>10</sup> 42 U.S.C. § 1973aa-6.

<sup>11</sup> 42 U.S.C. § 1973ee-1(a).

<sup>12</sup> [Http://www.uscg.mil/d13/units/mspuget/searec3.html](http://www.uscg.mil/d13/units/mspuget/searec3.html).

<sup>13</sup> 29 CFR 1630.2(h)(2).

<sup>14</sup> 28 CFR 35.104 and 28 CFR 36.104.

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<sup>15</sup> 29 U.S.C 706 and 793, as amended by sec. 111, Pub. L. 93-516; sec. 103(d)(2)(B), Pub. L. 99-506; sec. 9, Pub. L. 100-259; sec. 512, Pub. L. 101-336 ; and secs. 102 and 505, Pub. L. 102-569.

<sup>16</sup> 29 U.S.C. 794.

<sup>17</sup> 40 CFR 84.3(j)(2).

<sup>18</sup> Fair Housing--it's Your Right. U.S. Department of Housing and Urban Development, [www.hud.gov/HUDFairhousing.htm](http://www.hud.gov/HUDFairhousing.htm).

<sup>19</sup> Section 26-18-7 of the Code of Alabama, last amended in 1984.

<sup>20</sup> Section 47.10.086(c)(5) of the Alaska State Statutes.

<sup>21</sup> Section 8-863 of the Arizona Revised Statutes.

<sup>22</sup> Section 9-27-341(b)(3)(B)(vii)(a) of the Arkansas Code.

<sup>23</sup> Section 300 of the California Welfare and Institutions Code.

<sup>24</sup> Section 19-5-105 of the Colorado Revised Statutes.

<sup>25</sup> Section 1103(a) of the Delaware Code.

<sup>26</sup> Section 1101(9) of the Delaware Code.

<sup>27</sup> Section 63.089(3)(e) of the 2001 Florida Statutes.

<sup>28</sup> Section 15-11-94 of the Georgia Code.

<sup>29</sup> Section 571-61(b)(F) of the 2000 Hawaii Revised Statutes.

<sup>30</sup> Section 6-2005(d) of the Idaho Code.

<sup>31</sup> Section 1D of Act 50 of Chapter 750 of the Illinois Compiled Statutes. Illinois law defines an "unfit person" in the context of the involuntary termination of parental rights, and establishes grounds of "unfitness."

<sup>32</sup> Section 1-116 of Act 5 of Chapter 405 of the Illinois Compiled Statutes.

<sup>33</sup> Section 1-106 of Act 5 of Chapter 405 of the Illinois Compiled Statutes.

<sup>34</sup> Section 232.2(6)(n) of the Iowa Code 2001.

<sup>35</sup> Section 1583a(b)(1) of Chapter 38 of the Kansas Statutes.

<sup>36</sup> Section 127(6) of Chapter 610, Section 23(a) of Chapter 620, and Section 90(a) of Chapter 625 of the Kentucky Revised Statutes.

<sup>37</sup> Section 10(9) of Chapter 202B of the Kentucky Revised Code.

<sup>38</sup> Article 1036(1) of the Louisiana Children's Code.

<sup>39</sup> Article 1003(8) of the Louisiana Children's Code.

<sup>40</sup> Section 103(e)(i) of Title 93, Chapter 15 of the Mississippi Laws.

<sup>41</sup> Section 447(3) of Title XII, Chapter 211 of the Missouri Revised Statutes.

<sup>42</sup> Section 292(5) of Chapter 43 of the Nebraska Revised Statutes. Similarly, Nebraska law provides that a court may terminate the rights of one or both parents under a child custody decree and parenting plan if "one parent is or both parents are unable to discharge parental responsibilities because of...*mental deficiency*...."

<sup>43</sup> Section 106(1) of Chapter 128 of the Nevada Revised Statutes.

<sup>44</sup> Section 5(IV) of Title XVII of Chapter 170-C of the New Hampshire Revised Statutes Annotated.

<sup>45</sup> Section 14-15-19(3) of the North Dakota Century Code.

<sup>46</sup> Section 10-7006-1.1(A)(13)(c) of the Oklahoma Statutes. Section 10-7505-4.2(L)(1) of the Oklahoma Statutes provides that consent to adoption is not required from "a parent who has a...*mental deficiency*... which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities.

<sup>47</sup> Section 504(1) of Chapter 419b of the Oregon Revised Statutes.

<sup>48</sup> Section 1572(6) of Title 20, Chapter 7 of the South Carolina Code of Laws.

<sup>49</sup> Section 113(g)(8)(B)(i) of Title 36, Chapter 1 of the Tennessee Code.

<sup>50</sup> Section 3(a) of Chapter 161 of the Texas Family Code.

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- <sup>51</sup> Section 408(2) of Chapter 3a of the Utah Judicial Code.
- <sup>52</sup> Section 283 of Title 16.1, Chapter 11 of the Code of Virginia. Virginia authorizes the involuntary termination of parental rights based on a finding that it is not reasonably likely that the conditions which resulted in the neglect or abuse of a child can be substantially corrected or eliminated so as to allow the child's safe return to his parent or parents within a reasonable period of time."
- <sup>53</sup> Section 180(e) of Title 13, Chapter 13-34 of the Revised Code of Washington.
- <sup>54</sup> Section 15(3) of Title 26, Chapter 26-44 of the Revised Code of Washington.
- <sup>55</sup> Section 5(7)(b)(6) of Chapter 49, Article 6 of the West Virginia Code.
- <sup>56</sup> Section 48.415(1)(c) of the Wisconsin Statutes Annotated.
- <sup>57</sup> Until very recently, Pennsylvania also used a diagnosis of mental retardation.
- <sup>58</sup> Other diagnostic categories include "mental ability" (LA) and "unsound mind or mental weakness" (MS).
- <sup>59</sup> Section 12-13-21 of the Code of Alabama. Alabama law also provides for the appointment of corporations as guardians for *developmentally disabled* persons, and in this context defines such a person to be: "a person whose impairment of general intellectual functioning or adaptive behavior which is manifested before the person attains the age of 22 and results in *mental retardation*... as defined in the DD Act. Section 26-2A-104.1(a) and Section 102(7)) of the Code of Alabama.
- <sup>60</sup> Section 13.26.165(2)(A) of the Alaska State Statutes. Similarly, with respect to powers of attorney, Alaska law provides that disability be established by affidavit stating that the individual's ability to receive and evaluate information, or to communicate decisions, is impaired as a result of *mental deficiency*." Section 13.26.353 (a)(1) of the Alaska State Statutes.
- <sup>61</sup> Section 14-5101(1) of the Arizona Revised Statutes.
- <sup>62</sup> Section 28-65-101(1) of the Arkansas Code, last amended in 1985.
- <sup>63</sup> Section 1420 of the California Probate Code.
- <sup>64</sup> Section 15-1.5-101 of the Colorado Revised Statutes.
- <sup>65</sup> Section 1-1g of the Connecticut General Statutes. "General intellectual functioning" means the results obtained by assessment with one or more of the individually administered general intelligence tests developed for that purpose and standardized on a significantly adequate population and administered by a person or persons formally trained in test administration;" Significantly subaverage" means an intelligence quotient more than two standard deviations below the mean for the test; "Adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for the individual's age and cultural group; and "Developmental period" means the period of time between birth and the eighteenth birthday.
- <sup>66</sup> Section 3901 of the Delaware Code.
- <sup>67</sup> Section 3902(2) of the Delaware Code. Delaware law also confers a right on "*mentally retarded* persons" to have a qualified guardian when that is required to protect personal well-being and interests. Section 5505 of the Delaware Code.
- <sup>68</sup> Sections 21-2054(c), 21-2066, Section 21-2041 and Section 21-2011(11) of the District of Columbia Code.
- <sup>69</sup> Section 86.041 of the 2001 Florida Statutes.
- <sup>70</sup> Section 29-5-1(a)(1) of the Georgia Code.
- <sup>71</sup> Section 560:5-101 of the 2000 Hawaii Revised Statutes.
- <sup>72</sup> Section 560:5-401 of the 2000 Hawaii Revised Statutes.
- <sup>73</sup> Section 15-5-101(a) of the Idaho Code.
- <sup>74</sup> Section 15-5-401(b) of the Idaho Code.
- <sup>75</sup> Section 11a-1 and -2 of Act 5, Chapter 755 of the Illinois Compiled Statutes.
- <sup>76</sup> Section 1 of Title 29, Article 3, Chapter 6 of the Indiana Code and Section 1 of Title 12, Article 10, Chapter 7 of the Indiana Code.
- <sup>77</sup> Section 222.34 of the Iowa Code 2001.
- <sup>78</sup> Section 3002(a) of Chapter 59 of the Kansas Statutes. State law makes no specific reference to "*mental retardation*."
- <sup>79</sup> Sections 540 and 510(7) of Chapter 387 of the Kentucky Revised Statutes.
- <sup>80</sup> Article 355 of the Louisiana Code of Civil Procedure.
- <sup>81</sup> Sections 5-101(1) and 5401(2) of Title 18A of the Maine Revised Statutes.
- <sup>82</sup> Section 101(e) of Title 13 of the Maryland Statutes 2000.

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<sup>83</sup>Section 1 of Chapter 201 of the General Laws of Massachusetts. State law defines a “*mentally retarded person*” to be: “a person who, as a result of inadequately developed or impaired intelligence, is substantially limited in his ability to learn or adapt, as determined in accordance with established standards for the evaluation of a person’s ability to function in society.”

<sup>84</sup>Section 1602(1) of Chapter 330 of the Michigan Compiled Laws. “In the context of a persons older than 5 years to be: a severe, chronic condition that meets all of the following requirements: (i) Is attributable to a mental or physical impairment or a combination of mental and physical impairments. (ii) Is manifested before the individual is 22 years old. (iii) Is likely to continue indefinitely. (iv) Results in substantial functional limit-ations in 3 or more of the following areas of major life activity: (A) Self-care. (B) Receptive and expressive language. (C) Learning. (D) Mobility. (E) Self- direction. (F) Capacity for independent living. (G) Economic self- sufficiency. (v) Reflects the individual’s need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.” Section100b(20) of Chapter 330 of the Michigan Compiled Laws.

<sup>85</sup>Section 1(9) of Chapter 529 of the Minnesota Statutes 2000.

<sup>86</sup>Section 127 of Title 93, Chapter 13 of the Mississippi Laws.

<sup>87</sup>Section 57 of Title 1, Chapter 3 of the Mississippi Laws.

<sup>88</sup>Section 251 of Title 94, Chapter 13 of the Mississippi Laws.

<sup>89</sup>Section 10(4) of Title XII, Chapter 475 of the Missouri Revised Statutes. No specific reference is made to *mental retardation, developmental disability or mental deficiency*.

<sup>90</sup>Section 409(2)(a) of Title 72, Chapter 5 of the Montana Code Annotated 2001.

<sup>91</sup>Sections 2601(1) and 2630 of Chapter 30 of the Nebraska Revised Statutes.

<sup>92</sup>Section 3502 (8) of Chapter 30 of the Nebraska Revised Statutes.

<sup>93</sup>Section 175 of Chapter 132 and Section 19 of Chapter 159 of the Nevada Revised Statutes.

<sup>94</sup>Section 2(V) of Title XLIV, Chapter 464-a of the New Hampshire Revised Statutes Annotated.

<sup>95</sup>Section 2 of Title 3B, Article 1 of the New Jersey Permanent Statutes.

<sup>96</sup>Section 14 of Title 38, Article 4; Section101(f) of Title 45, Article 5; and Section 16M of Title 27, Article 7 of the New Mexico Statutes Annotated.

<sup>97</sup>Section 2(a) of Article 81 of the New York State Consolidated Laws. That term is defined to mean an individual who “is likely to suffer harm because he or she is unable to provide for personal needs and/or property management, and cannot adequately understand and appreciate the nature and consequences of such inability. Section 2(b) of Article 81 of the New York State Consolidated Laws.

<sup>98</sup>Section 1101(7) and (8) of Chapter 35A of the North Carolina General Statutes. State law also defines individuals who are “incapacitated” as: “lacking the ability to manage property and business affairs effectively by reason of...*mental deficiency*... or other disabling cause. Section 1(8) of Chapter 33B of the North Carolina General Statutes.

<sup>99</sup>Section 30.1-26-01(2) of the North Dakota Century Code.

<sup>100</sup>Section 30.1-29-01(2) of the North Dakota Century Code.

<sup>101</sup>Section 2111.01(D) of the Ohio Revised Code.

<sup>102</sup>Section 30-1-111(A)(12)(a)(2) of the Oklahoma Statutes.

<sup>103</sup>Section 5(3) of Chapter 125 of the Oregon Revised Statutes. Prior to 1992, that definition expressly included the term “*mental retardation*.”

<sup>104</sup>Section 5501 of Title 20 of the Pennsylvania Consolidated Statutes Annotated.

<sup>105</sup>Section 1 of Title 18, Chapter 13 of the General Laws of Rhode Island.

<sup>106</sup>Section 201(16) and (18) of Title 62, Chapter 1 and Section 101(1) of Title 62, Chapter 5 of the South Carolina Code of Laws.

<sup>107</sup>Section 201(6) and (9) of Title 62, Chapter 1 and Section 401(2) of Title 62, Chapter 5 of the South Carolina Code of Laws.

<sup>108</sup>Section 303 of Chapter 29A-5 of the South Dakota Codified Laws. The law makes no specific reference to *mental retardation, mental deficiency or developmental disability*.

<sup>109</sup>Sections 101(4) and 101(7) of Title 34, Chapter 11 of the Tennessee Code.

<sup>110</sup>Section 602 of Chapter XIII of the Texas Probate Code.

<sup>111</sup>Section 3(p) of Chapter I and Section 601(13) of Chapter XIII of the Texas Probate Code.

<sup>112</sup>Section 201(22) of Chapter 1 of the Utah Uniform Probate Code.

<sup>113</sup>Section 401(2)(a) of Chapter 5 of the Utah Uniform Probate Code.

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<sup>114</sup> Sections 3063 and 3061 of Title 14, Chapter 111 of the Vermont Statutes. In this context, state law defines "*mentally retarded*" to mean: "significantly subaverage intellectual functioning which exists concurrently with deficits in adaptive behavior."

<sup>115</sup> Section 9304 of Title 18, Chapter 215 of the Vermont Statutes.

<sup>116</sup> Section 9302(1) of Title 18, Chapter 215 of the Vermont Statutes.

<sup>117</sup> Section 134.6 of Title 37, Chapter 4 of the Code of Virginia.

<sup>118</sup> Section 10(1) of Title 11, Chapter 11-88 of the Revised Code of Washington.

<sup>119</sup> Section 10(1)(e) of Title 11, Chapter 11-88 of the Revised Code of Washington.

<sup>120</sup> Section 4(13) of Chapter 44A, Article 1 of the West Virginia Code.

<sup>121</sup> Section 2(a) of Chapter 44A, Article 1 of the West Virginia Code.

<sup>122</sup> Section 880.01(4) of the Wisconsin Statutes Annotated.

<sup>123</sup> Section 880.01(2) of the Wisconsin Statutes Annotated.

<sup>124</sup> Chapter 3 of Title 3 of the 2001 Wyoming Statutes.

<sup>125</sup> Section 101(a)(xii) of Title 3, Chapter 1 of the 2001 Wyoming Statutes.

<sup>126</sup> Section 15-24-2(3) of the Code of Alabama, last amended in 1985. State law defines that term to mean "significant sub-average general intellectual functioning resulting in or associated with concurrent impairments in adaptive behavior and manifested during the developmental period, as measured by appropriate standardized testing instruments."

<sup>127</sup> Section 15-16-22 of the Code of Alabama, last amended in 1985.

<sup>128</sup> Section 12.47.130(5) of the Alaska State Statutes. State law defines that term to mean a significantly below average general intellectual functioning that impairs a person's ability to adapt to or cope with the ordinary demands of life.

<sup>129</sup> Section 13-4501(2) of the Arizona Revised Statutes.

<sup>130</sup> Section 5-4-618(b) of the Arkansas Code. State law defines "*mental retardation*" to be: "Significantly sub-average general intellectual functioning accompanied by significant deficits or impairments in adaptive functioning manifest in the developmental period, but no later than age eighteen (18); and... Deficits in adaptive behavior. Section 5-4-618(a)(1) of the Arkansas Code. The statute also places the burden of proving mental retardation at the time of committing the offense by a preponderance of the evidence on the defendant. This law was last amended in 1993."

<sup>131</sup> Section 1367(a) of the California Penal Code. State law defines "developmental disability" to be a disability that originates before an individual attains age 18, continues, or can be expected to continue, indefinitely and constitutes a substantial handicap for the individual and expressly includes both "*mental retardation*" and "handicapping conditions found to be closely related to *mental retardation* or to require treatment similar to that required for *mentally retarded* individuals."

<sup>132</sup> Section 16-11-311 of the Colorado Revised Statutes.

<sup>133</sup> Sections 6-9-403 and 16-11-103 of the Colorado Revised Statutes, last amended in 1993. Colorado also has similar provisions related to *developmentally disabled* offenders in its youthful offender system.

<sup>134</sup> Section 54-56d of the Connecticut General Statutes.

<sup>135</sup> Section 401(a) of the Delaware Code. If the defendant prevails in establishing such an affirmative defense, the trier of fact shall return a verdict of "not guilty by reason of insanity." "Mental defect" is defined to be "any condition of the brain or nervous system recognized as defective, as compared with an average or normal condition, by a substantial part of the medical profession. Section 222(16) of the Delaware Code."

<sup>136</sup> Section 6-1902(2) of the District of Columbia Code. State law defines such a person to be: "a person who is...impaired in adaptive behavior to a moderate, severe or profound degree and functioning at the moderate, severe or profound intellectual level in accordance with standard measurements...Section 21-1114 of the District of Columbia Code."

<sup>137</sup> Section 916.302(1)(a) of the 2001 Florida Statutes. The term is defined to mean: "significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. Section 916.106(12) of the 2001 Florida Statutes. The section defines "significantly subaverage general intellectual functioning" to mean "performance which is two or more standard deviations from the mean score on a standardized intelligence test, and "adaptive behavior" to mean "the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of the individual's age, cultural group, and community."

<sup>138</sup> Section 921.137 of the 2001 Florida Statutes. State law defines that term to mean: "significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18."

<sup>139</sup> Section 7-7-131 of the Georgia Code.

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<sup>140</sup> Section 17-2-4 of the Georgia Code. In this context, state law defines “*mentally retarded*” to be: “having significantly subaverage general intellectual functioning resulting in or associated with impairments in adaptive behavior which manifested during the developmental period. Section 7-7-131 of the Georgia Code.

<sup>141</sup> Section 704-403 of the 2000 Hawaii Revised Statutes.

<sup>142</sup> Section 18-207(1) of the Idaho Code.

<sup>143</sup> Section 19-1715 of the Idaho Code.

<sup>144</sup> Section 18-210 of the Idaho Code.

<sup>145</sup> Section 5-5-3.1 of Act 5, Chapter 730 of the Illinois Compiled Statutes. The term “*mentally retarded*” in this context is defined to be: “subaverage general intellectual functioning generally originating during the developmental period and associated with impairment in adaptive behavior reflected in delayed maturation or reduced learning ability or inadequate social adjustment. Section 5-1-13 of Act 5, Chapter 730 of the Illinois Compiled Statutes.

<sup>146</sup> Section 5 of Title 35, Article 36, Chapter 2 of the Indiana Code.

<sup>147</sup> Section 130 of Title 12, Article 7, Chapter 2 of the Indiana Code.

<sup>148</sup> Section 5(e) of Title 35, Article 36, Chapter 2 of the Indiana Code. The term “*mentally retarded individual*” in this context means: “an individual who, before becoming twenty-two (22) years of age, manifests: (1) significantly subaverage intellectual functioning; and (2) substantial impairment of adaptive behavior; that is documented in a court ordered evaluative report. Section 2 of Title 35, Article 36, Chapter 9 of the Indiana Code.

<sup>149</sup> Section 232.51 of the Iowa Code 2001.

<sup>150</sup> Section 222.53 of the Iowa Code 2001. If the child is committed as a child with mental illness or *mental retardation*, any order adjudicating the child to have committed a delinquent act shall be set aside and the petition shall be dismissed.

<sup>151</sup> Section 4634 of Chapter 21 of the Kansas Statutes. In this context, state law defines “*mentally retarded*” to be : “having significantly subaverage general intellectual functioning ... to an extent which substantially impairs one's capacity to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law. Section 4634(f) of Chapter 21 of the Kansas Statutes.

<sup>152</sup> Section 140 of Chapter 532 of the Kentucky Revised Statutes. State law defines that term to mean: “a defendant with significant subaverage intellectual functioning existing concurrently with substantial deficits in adaptive behavior and manifested during the developmental period .... ”Significantly subaverage general intellectual functioning” is defined as an intelligence quotient (I.Q.) of seventy (70) or below. Section 130(2) of Chapter 532 of the Kentucky Revised Statutes.

<sup>153</sup> Section 101-B of Title 15 of the Maine Revised Statutes.

<sup>154</sup> Section 109(a) of Title 3 of the Maryland Statutes 2000.

<sup>155</sup> Section 412(g)(1) of Title 3 of the Maryland Statutes 2000. State law defines “*mentally retarded*” to be: “significantly subaverage intellectual functioning as evidenced by an intelligence quotient of 70 or below on an individually administered intelligence quotient test and impairment in adaptive behavior, and the *mental retardation* is manifested before the individual attains the age of 22. Section 412(g)(1)(f)(3) of Title 3 of the Maryland Statutes 2000.

<sup>156</sup> Section 904(a)(2) of Title 3 of the Maryland Statutes 2000.

<sup>157</sup> Section 23E of Chapter 233 of the General Laws of Massachusetts. That term is defined to mean: “substantial limitations in present functioning manifesting before age eighteen and characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work.

<sup>158</sup> Section 2020 of Chapter 330 of the Michigan Compiled Laws. State law provides that a defendant to a criminal charge be presumed competent to stand trial and may be determined incompetent only if “he is incapable because of his *mental condition* of understanding the nature and object of the proceedings against him or of assisting in his defense in a rational manner.

<sup>159</sup> Section: 26 of Chapter 611 of the Minnesota Statutes 2000.

<sup>160</sup> Section 3 of Title 99, Chapter 13 of the Mississippi Laws.

<sup>161</sup> Sections 30(1) and 15 of Title XII, Chapter 552 of the Missouri Revised Statutes.

<sup>162</sup> Section 304(d)(a) of Title 46, Chapter 18 of the Montana Code Annotated 2001. State law includes as a mitigating circumstance related to whether or not a death penalty should be imposed whether “the capacity of the defendant to appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law was substantially impaired.”

<sup>163</sup> Section 105.01(2) of Chapter 28 of the Nebraska Revised Statutes. State law defines that term to mean: “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior. An

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intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of *mental retardation*.

<sup>164</sup>Section 35 of Chapter 200 of the Nevada Revised Statutes.

<sup>165</sup>Section 44(c)(2) of Title 2A, Article 4A of the New Jersey Permanent Statutes.

<sup>166</sup>Section 1 of Title 31, Article 9 of the New Mexico Statutes Annotated. State law defines "*mental retardation*" in this context to be: "significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior. An intelligence quotient of seventy or below on a reliably administered intelligence quotient test shall be presumptive evidence of *mental retardation*. Section 1.6E of Title 31, Article 9 of the New Mexico Statutes Annotated.

<sup>167</sup>Section 2.1 of Title 31, Article 20A of the New Mexico Statutes Annotated. State law also establishes special alternative procedures for determining competency to testify or for taking the testimony of the witness with *mental retardation*, and defines that term to mean: "substantial limitations in present functioning characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work." Section 8 of Title 38, Article 6 of the New Mexico Statutes Annotated.

<sup>168</sup>Section 14 of Article 40 of the New York State Consolidated Laws.

<sup>169</sup>Section 10 of Article 730 of the New York State Consolidated Laws.

<sup>170</sup>Section 1001(a) of Chapter 15A of the North Carolina General Statutes.

<sup>171</sup>Section 959 of Chapter 15A of the North Carolina General Statutes.

<sup>172</sup>Section 12.1-04-04 of the North Dakota Century Code.

<sup>173</sup>Section 12.1-04.1-01 of the North Dakota Century Code.

<sup>174</sup>Sections 2945.37 and 2945.40(A) of the Ohio Revised Code.

<sup>175</sup>Section 21-152(3) of the Oklahoma Statutes.

<sup>176</sup>Sections 22-925 and 22-1175.5(3) of the Oklahoma Statutes.

<sup>177</sup>Section 295(1) of Chapter 161 of the Oregon Revised Statutes.

<sup>178</sup>Sections 300 and 305 of Chapter 161 of the Oregon Revised Statutes.

<sup>179</sup>Section 360 of Chapter 161 of the Oregon Revised Statutes.

<sup>180</sup>Section 314(c)(1) of Title 18 of the Pennsylvania Consolidated Statutes Annotated.

<sup>181</sup>Section 3.3(a)(5) of Title 40.1, Chapter 5 of the General Laws of Rhode Island.

<sup>182</sup>Section 10A of Title 17, Chapter 24 of the South Carolina Code of Laws.

<sup>183</sup>Section 20 of Title 17, Chapter 24 of the South Carolina Code of Laws.

<sup>184</sup>Section 20(C)(b)(10) of Title 16, Chapter 3 of the South Carolina Code of Laws. State law defines "*mental retardation*," to be: "significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

<sup>185</sup>Sections 1 and 2 of Chapter 10A-2 of the South Dakota Codified Laws.

<sup>186</sup>Sections 26.1 and 26.2 of Chapter 23A-27A of the South Dakota Codified Laws. State law defines mental retardation" to be "significant subaverage general intellectual functioning existing concurrently with substantial related deficits in applicable adaptive skill areas.

<sup>187</sup>Section 502 of Title 33, Chapter 5 of the Tennessee Code.

<sup>188</sup>Section 203(b) of Title 39, Chapter 13 of the Tennessee Code.

<sup>189</sup>Section 1A(a) of Article 46.02 of the Texas Code of Criminal Procedure. "A person is incompetent to stand trial if the person does not have: (1) sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding; or (2) a rational as well as factual understanding of the proceedings against the person."

<sup>190</sup>Section 4(a)(2) of Article 46.02 of the Texas Code of Criminal Procedure.

<sup>191</sup>Article 46.03 of the Texas Code of Criminal Procedure.

<sup>192</sup>Section 3(a) of Chapter 55 of the Texas Family Code.

<sup>193</sup>Section 305(1) of Chapter 2 of the Utah Criminal Code.

<sup>194</sup>Section 305(4) of Chapter 2 of the Utah Criminal Code. "*Mental retardation*" is, defined by state law to be: "a significant subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested during the developmental period as defined by the current Diagnostic and Statistical Manual of the American Psychiatric Association."

<sup>195</sup>Section 2 of Chapter 15 of the Utah Code of Criminal Procedure. Section 101(6) of Chapter 5 of the Utah Human Services Code defines "mentally retarded," in this context, to be: "a significant, subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested during the developmental period as

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defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association.”

<sup>196</sup>Section 4801(a) of Title 13, Chapter 157 of the Vermont Statutes.

<sup>197</sup>Section 4817(2) of Title 13, Chapter 157 of the Vermont Statutes.

<sup>198</sup>Section 182.2 of Title 19.2, Chapter 11.1 of the Code of Virginia.

<sup>199</sup>Section 50 of Title 10, Chapter 10-77 of the Revised Code of Washington.

<sup>200</sup>Section 10(14) of Title 10, Chapter 10-77 of the Revised Code of Washington.

<sup>201</sup>Section 70 of Title 10, Chapter 10-95 of the Revised Code of Washington. State law defines “*mentally retarded*” to be: “Significantly subaverage general intellectual functioning; (ii) existing concurrently with deficits in adaptive behavior; and (iii) both significantly subaverage general intellectual functioning and deficits in adaptive behavior were manifested during the developmental period. The statute also defines: (1) “general intellectual functioning” to mean the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning; (2) “significantly subaverage general intellectual functioning” to mean intelligence quotient seventy or below; (3) “adaptive behavior” to mean the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for his or her age; and (4) “developmental period” to mean the period of time between conception and the eighteenth birthday.

<sup>202</sup>Section 1(a) of Chapter 27, Article 6A of the West Virginia Code.

<sup>203</sup>Section 3 of Chapter 27, Article 6A of the West Virginia Code.

<sup>204</sup>Section 971.15 of the Wisconsin Statutes Annotated.

<sup>205</sup>Section 971.165 of the Wisconsin Statutes Annotated.

<sup>206</sup>Section 304(a) of Title 7, Chapter 11 of the 2001 Wyoming Statutes.

<sup>207</sup>Section 302(a) of Title 7, Chapter 11 of the 2001 Wyoming Statutes.

<sup>208</sup>Section 301(a)(iii) of Title 7, Chapter 11 of the 2001 Wyoming Statutes.

<sup>1</sup> Section 26-18-7 of the Code of Alabama, last amended in 1984.

<sup>2</sup> Section 47.10.086(c)(5) of the Alaska State Statutes.

<sup>3</sup> Section 8-863 of the Arizona Revised Statutes.

<sup>4</sup> Section 9-27-341(b)(3)(B)(vii)(a) of the Arkansas Code.

<sup>5</sup> Section 300 of the California Welfare and Institutions Code.

<sup>6</sup> Section 19-5-105 of the Colorado Revised Statutes.

<sup>7</sup> Section 1103(a) of the Delaware Code.

<sup>8</sup> Section 1101(9) of the Delaware Code.

<sup>9</sup> Section 63.089(3)(e) of the 2001 Florida Statutes.

<sup>10</sup> Section 15-11-94 of the Georgia Code.

<sup>11</sup> Section 571-61(b)(F) of the 2000 Hawaii Revised Statutes.

<sup>12</sup> Section 6-2005(d) of the Idaho Code.

<sup>13</sup> Section 1D of Act 50 of Chapter 750 of the Illinois Compiled Statutes.

<sup>14</sup> Section 1-116 of Act 5 of Chapter 405 of the Illinois Compiled Statutes.

<sup>15</sup> Section 1-106 of Act 5 of Chapter 405 of the Illinois Compiled Statutes.

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16. Section 232.2(6)(n) of the Iowa Code 2001.
  17. Section 1583a(b)(1) of Chapter 38 of the Kansas Statutes.
  18. Section 127(6) of Chapter 610, Section 23(a) of Chapter 620, and Section 90(a) of Chapter 625 of the Kentucky Revised Statutes.
  19. Section 10(9) of Chapter 202B of the Kentucky Revised Code.
  20. Article 1036(1) of the Louisiana Children's Code.
  21. Article 1003(8) of the Louisiana Children's Code.
  22. Section 103(e)(i) of Title 93, Chapter 15 of the Mississippi Laws.
  23. Section 447(3) of Title XII, Chapter 211 of the Missouri Revised Statutes.
  24. Section 292(5) of Chapter 43 of the Nebraska Revised Statutes.
  25. Section 364 of Chapter 42 of the Nebraska Revised Statutes.
  26. Section 106(1) of Chapter 128 of the Nevada Revised Statutes.
  27. Section 5(IV) of Title XVII of Chapter 170-C of the New Hampshire Revised Statutes Annotated.
  28. Section 14-15-19(3) of the North Dakota Century Code.
  29. Section 10-7006-1.1(A)(13)(c) of the Oklahoma Statutes. Section 10-7505-4.2(L)(1) of the Oklahoma Statutes provides that consent to adoption is not required from "a parent who has a...mental deficiency... which renders the parent incapable of adequately and appropriately exercising parental rights, duties and responsibilities.
  30. Section 504(1) of Chapter 419b of the Oregon Revised Statutes.
  31. Section 1572(6) of Title 20, Chapter 7 of the South Carolina Code of Laws.
  32. Section 113(g)(8)(B)(i) of Title 36, Chapter 1 of the Tennessee Code.
  33. Section 3(a) of Chapter 161 of the Texas Family Code.
  34. Section 408(2) of Chapter 3a of the Utah Judicial Code.
  35. Section 283 of Title 16.1, Chapter 11 of the Code of Virginia.
  36. Section 180(e) of Title 13, Chapter 13-34 of the Revised Code of Washington.
  37. Section 15(3) of Title 26, Chapter 26-44 of the Revised Code of Washington.
  38. Section 5(7)(b)(6) of Chapter 49, Article 6 of the West Virginia Code.
  39. Section 48.415(1)(c) of the Wisconsin Statutes Annotated.
  1. Section 12-13-21 of the Code of Alabama, last amended in 1986.
  2. Section 26-2A-104.1(a) and Section 102(7)) of the Code of Alabama, last amended in 1991.
  3. Section 22-52-55(a) of the Code of Alabama, last amended in 1969.
  4. Section 26-2A-130(c) of the Code of Alabama, last amended in 1987.
  5. Section 13.26.165(2)(A) of the Alaska State Statutes.
  6. Section 13.26.353 (a)(1) of the Alaska State Statutes.
  7. Section 14-5101(1) of the Arizona Revised Statutes.
  8. Section 28-65-101(1) of the Arkansas Code, last amended in 1985.
  9. Section 1420 of the California Probate Code.

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10. Section 15-1.5-101 of the Colorado Revised Statutes.
  11. Section 45a-669(f) of the Connecticut General Statutes defines "unable to meet essential requirements for his physical health or safety" to be "the inability through one's own efforts and through acceptance of assistance from family, friends and other available private and public sources, to meet one's needs for medical care, nutrition, clothing, shelter, hygiene or safety so that, in the absence of a guardian of the mentally retarded [person serious physical injury, illness or disease is likely to occur.
  12. Section 45a-676(a) of the Connecticut General Statutes. Section 45a-669(g) defines "unable to make informed decisions about matters related to one's care" to be "the inability of a mentally retarded person to achieve a rudimentary understanding, after conscientious efforts at explanation, of information necessary to make decisions about his need for physical or mental health care, food, clothing, shelter, hygiene, protection from physical abuse or harm, or other care.
  13. Section 1-1g of the Connecticut General Statutes. "General intellectual functioning" means the results obtained by assessment with one or more of the individually administered general intelligence tests developed for that purpose and standardized on a significantly adequate population and administered by a person or persons formally trained in test administration;"Significantly subaverage" means an intelligence quotient more than two standard deviations below the mean for the test; "Adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for the individual's age and cultural group; and "Developmental period" means the period of time between birth and the eighteenth birthday.
  14. Section 3901 of the Delaware Code.
  15. Section 3902(2) of the Delaware Code.
  16. Section 5505 of the Delaware Code.
  17. Section 21-2066 of the District of Columbia Code.
  18. Section 21-2041 of the District of Columbia Code.
  19. Section 21-2011(11) of the District of Columbia Code.
  20. Sections 21-2054(c) and 21-2041(f) of the District of Columbia Code.
  21. Section 86.041 of the 2001 Florida Statutes.
  22. Section 29-5-1(a)(1) of the Georgia Code.
  23. Section 560:5-101 of the 2000 Hawaii Revised Statutes.
  24. Section 560:5-401 of the 2000 Hawaii Revised Statutes.
  25. Section 15-5-101(a) of the Idaho Code.
  26. Section 15-5-401(b) of the Idaho Code.
  27. Section 11a-1 and -2 of Act 5, Chapter 755 of the Illinois Compiled Statutes.
  28. Section 1 of Title 29, Article 3, Chapter 6 of the Indiana Code and Section 1 of Title 12, Article 10, Chapter 7 of the Indiana Code.
  29. Section 222.34 of the Iowa Code 2001.
  30. Section 3002(a) of Chapter 59 of the Kansas Statutes.
  31. Sections 540 and 510(7) of Chapter 387 of the Kentucky Revised Statutes.
  32. Article 355 of the Louisiana Code of Civil Procedure.
  33. Sections 5-101(1) and 5401(2) of Title 18A of the Maine Revised Statutes.
  34. Section 101(e) of Title 13 of the Maryland Statutes 2000.
  35. Section 1 of Chapter 201 of the General Laws of Massachusetts.

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<sup>36</sup> *Ibid.*

<sup>37</sup> Section 1602(1) of Chapter 330 of the Michigan Compiled Laws.

<sup>38</sup> Section 100b(20) of Chapter 330 of the Michigan Compiled Laws.

<sup>39</sup> Section 1(9) of Chapter 529 of the Minnesota Statutes 2000.

<sup>40</sup> Section 127 of Title 93, Chapter 13 of the Mississippi Laws.

<sup>41</sup> Section 57 of Title 1, Chapter 3 of the Mississippi Laws.

<sup>42</sup> Section 251 of Title 94, Chapter 13 of the Mississippi Laws.

<sup>43</sup> Section 10(4) of Title XII, Chapter 475 of the Missouri Revised Statutes.

<sup>44</sup> Section 409(2)(a) of Title 72, Chapter 5 of the Montana Code Annotated 2001.

<sup>45</sup> Sections 2601(1) and 2630 of Chapter 30 of the Nebraska Revised Statutes.

<sup>46</sup> Section 3502 (8) of Chapter 30 of the Nebraska Revised Statutes.

<sup>47</sup> Section 175 of Chapter 132 of the Nevada Revised Statutes.

<sup>48</sup> Section 19 of Chapter 159 of the Nevada Revised Statutes.

<sup>49</sup> Section 2(V) of Title XIIIV, Chapter 464-a of the New Hampshire Revised Statutes Annotated.

<sup>50</sup> Section 2 of Title 3B, Article 1 of the New Jersey Permanent Statutes.

<sup>51</sup> Section 14 of Title 38, Article 4; Section 101(f) of Title 45, Article 5; and Section 16M of Title 27, Article 7 of the New Mexico Statutes Annotated.

<sup>52</sup> Section 2(a) of Article 81 of the New York State Consolidated Laws.

<sup>53</sup> Section 2(b) of Article 81 of the New York State Consolidated Laws.

<sup>54</sup> Section 1101(7) and (8) of Chapter 35A of the North Carolina General Statutes.

<sup>55</sup> Section 1(8) of Chapter 33B of the North Carolina General Statutes.

<sup>56</sup> Section 30.1-26-01(2) of the North Dakota Century Code.

<sup>57</sup> Section 30.1-29-01(2) of the North Dakota Century Code.

<sup>58</sup> Section 2111.01(D) of the Ohio Revised Code.

<sup>59</sup> Section 30-1-111(A)(12)(a)(2) of the Oklahoma Statutes.

<sup>60</sup> Section 43A-10-103(A)(4)(a) of the Oklahoma Statutes.

<sup>61</sup> Section 5(3) of Chapter 125 of the Oregon Revised Statutes.

<sup>62</sup> Section 5501 of Title 20 of the Pennsylvania Consolidated Statutes Annotated.

<sup>63</sup> Section 1 of Title 18, Chapter 13 of the General Laws of Rhode Island.

<sup>64</sup> Section 2(2) of Title 33, Chapter 15 of the General Laws of Rhode Island.

<sup>65</sup> Section 44 of Title 33, Chapter 15 of the General Laws of Rhode Island.

<sup>66</sup> Section 201(16) and (18) of Title 62, Chapter 1 and Section 101(1) of Title 62, Chapter 5 of the South Carolina Code of Laws.

<sup>67</sup> Section 201(6) and (9) of Title 62, Chapter 1 and Section 401(2) of Title 62, Chapter 5 of the South Carolina Code of Laws.

<sup>68</sup> Section 303 of Chapter 29A-5 of the South Dakota Codified Laws.

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- <sup>69</sup> Sections 101(4) and 101(7) of Title 34, Chapter 11 of the Tennessee Code.
- <sup>70</sup> Section 602 of Chapter XIII of the Texas Probate Code.
- <sup>71</sup> Section 3(p) of Chapter I and Section 601(13) of Chapter XIII of the Texas Probate Code.
- <sup>72</sup> Section 201(22) of Chapter 1 of the Utah Uniform Probate Code.
- <sup>73</sup> Section 303(4) of Chapter 5 of the Utah Uniform Probate Code.
- <sup>74</sup> Section 401(2)(a) of Chapter 5 of the Utah Uniform Probate Code.
- <sup>75</sup> Sections 3063 and 3061 of Title 14, Chapter 111 of the Vermont Statutes.
- <sup>76</sup> Section 3061(4) of Title 14, Chapter 111 of the Vermont Statutes.
- <sup>77</sup> Section 9304 of Title 18, Chapter 215 of the Vermont Statutes.
- <sup>78</sup> Section 9302(1) of Title 18, Chapter 215 of the Vermont Statutes.
- <sup>79</sup> Section 134.6 of Title 37, Chapter 4 of the Code of Virginia.
- <sup>80</sup> Section 34.1 of Title 55, Chapter 2.1 (the Uniform Custodial Trust Act) of the Code of Virginia.
- <sup>81</sup> Section 10(1) of Title 11, Chapter 11-88 of the Revised Code of Washington.
- <sup>82</sup> Section 10(1)(e) of Title 11, Chapter 11-88 of the Revised Code of Washington.
- <sup>83</sup> Section 4(13) of Chapter 44A, Article 1 of the West Virginia Code.
- <sup>84</sup> Section 2(a) of Chapter 44A, Article 1 of the West Virginia Code.
- <sup>85</sup> Section 880.01(4) of the Wisconsin Statutes Annotated.
- <sup>86</sup> Section 880.01(2) of the Wisconsin Statutes Annotated.
- <sup>87</sup> Chapter 3 of Title 3 of the 2001 Wyoming Statutes.
- <sup>88</sup> Section 101(a)(xii) of Title 3, Chapter 1 of the 2001 Wyoming Statutes.
- <sup>1</sup> Section 15-24-2(3) of the Code of Alabama, last amended in 1985.
- <sup>2</sup> Section 15-16-22 of the Code of Alabama, last amended in 1985.
- <sup>3</sup> Section 12.47.130(5) of the Alaska State Statutes.
- <sup>4</sup> Section 13-4501(2) of the Arizona Revised Statutes.
- <sup>5</sup> Section 5-4-618(b) of the Arkansas Code.
- <sup>6</sup> Section 5-4-618(a)(1) of the Arkansas Code. The statute also places the burden of proving mental retardation at the time of committing the offense by a preponderance of the evidence on the defendant. This law was last amended in 1993.
- <sup>7</sup> *Ibid.*
- <sup>8</sup> Section 1367(a) of the California Penal Code.
- <sup>9</sup> Section 16-9-402 of the Colorado Revised Statutes, last amended in 1993.
- <sup>10</sup> Section 16-11-311 of the Colorado Revised Statutes.
- <sup>11</sup> Sections 6-9-403 and 16-11-103 of the Colorado Revised Statutes, last amended in 1993. Colorado also has similar provisions related to *developmentally disabled* offenders in its youthful offender system.
- <sup>12</sup> Section 54-56d of the Connecticut General Statutes.

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13. Section 401(a) of the Delaware Code. If the defendant prevails in establishing such an affirmative defense, the trier of fact shall return a verdict of "not guilty by reason of insanity."
  14. Section 222(16) of the Delaware Code.
  15. Section 21-1115(a) of the District of Columbia Code.
  16. Section 6-1902(2) of the District of Columbia Code.
  17. Section 21-1114 of the District of Columbia Code.
  18. Section 916.302(1)(a) of the 2001 Florida Statutes.
  19. Section 916.106(12) of the 2001 Florida Statutes. The section defines "significantly subaverage general intellectual functioning" to mean "performance which is two or more standard deviations from the mean score on a standardized intelligence test, and "adaptive behavior" to mean "the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of the individual's age, cultural group, and community.
  20. Section 921.137 of the 2001 Florida Statutes.
  21. Section 7-7-131 of the Georgia Code.
  22. Section 17-2-4 of the Georgia Code.
  23. Section 7-7-131 of the Georgia Code.
  24. Section 15-11-149 of the Georgia Code.
  25. Section 704-403 of the 2000 Hawaii Revised Statutes.
  26. Section 18-207(1) of the Idaho Code.
  27. Section 19-1715 of the Idaho Code.
  28. Section 18-210 of the Idaho Code.
  29. Section 5-5-3.1 of Act 5, Chapter 730 of the Illinois Compiled Statutes.
  30. Section 5-1-13 of Act 5, Chapter 730 of the Illinois Compiled Statutes.
  31. Section 5 of Title 35, Article 36, Chapter 2 of the Indiana Code.
  32. Section 130 of Title 12, Article 7, Chapter 2 of the Indiana Code.
  33. Section 5(e) of Title 35, Article 36, Chapter 2 of the Indiana Code.
  34. Section 2 of Title 35, Article 36, Chapter 9 of the Indiana Code.
  35. Section 232.51 of the Iowa Code 2001.
  36. Section 222.53 of the Iowa Code 2001. If the child is committed as a child with mental illness or *mental retardation*, any order adjudicating the child to have committed a delinquent act shall be set aside and the petition shall be dismissed.
  37. Section 4634 of Chapter 21 of the Kansas Statutes.
  38. Section 4634(f) of Chapter 21 of the Kansas Statutes.
  39. Section 140 of Chapter 532 of the Kentucky Revised Statutes.
  40. Section 130(2) of Chapter 532 of the Kentucky Revised Statutes.
  41. Section 101-B of Title 15 of the Maine Revised Statutes.
  42. Section 109(a) of Title 3 of the Maryland Statutes 2000.
  43. Section 412(g)(1) of Title 3 of the Maryland Statutes 2000.

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- <sup>44</sup>Section 412(g)(1)(f)(3) of Title 3 of the Maryland Statutes 2000.
- <sup>45</sup>Section 904(a)(2) of Title 3 of the Maryland Statutes 2000.
- <sup>46</sup>Section 23E of Chapter 233 of the General Laws of Massachusetts.
- <sup>47</sup>Section 2020 of Chapter 330 of the Michigan Compiled Laws.
- <sup>48</sup>Section: 26 of Chapter 611 of the Minnesota Statutes 2000.
- <sup>49</sup>Section 3 of Title 99, Chapter 13 of the Mississippi Laws.
- <sup>50</sup>Sections 30(1) and 15 of Title XII, Chapter 552 of the Missouri Revised Statutes.
- <sup>51</sup>Section 304(d)(a) of Title 46, Chapter 18 of the Montana Code Annotated 2001.
- <sup>52</sup>Section 105.01(2) of Chapter 28 of the Nebraska Revised Statutes.
- <sup>53</sup>Section 35 of Chapter 200 of the Nevada Revised Statutes.
- <sup>54</sup>Section 44(c)(2) of Title 2A, Article 4A of the New Jersey Permanent Statutes.
- <sup>55</sup>Section 1 of Title 31, Article 9 of the New Mexico Statutes Annotated.
- <sup>56</sup>Section 1.6E of Title 31, Article 9 of the New Mexico Statutes Annotated.
- <sup>57</sup>Section 2.1 of Title 31, Article 20A of the New Mexico Statutes Annotated.
- <sup>58</sup>Section 8 of Title 38, Article 6 of the New Mexico Statutes Annotated.
- <sup>59</sup>Section 14 of Article 40 of the New York State Consolidated Laws.
- <sup>60</sup>Section 10 of Article 730 of the New York State Consolidated Laws.
- <sup>61</sup>Section 1001(a) of Chapter 15A of the North Carolina General Statutes.
- <sup>62</sup>Section 959 of Chapter 15A of the North Carolina General Statutes.
- <sup>63</sup>Section 1340.16(e)(3) of Chapter 15A of the North Carolina General Statutes.
- <sup>64</sup>Section 2000(f)(2) of Chapter 15A of the North Carolina General Statutes.
- <sup>65</sup>Section 12.1-04-04 of the North Dakota Century Code.
- <sup>66</sup>Section 12.1-04.1-01 of the North Dakota Century Code.
- <sup>67</sup>Sections 2945.37 and 2945.40(A) of the Ohio Revised Code.
- <sup>68</sup>Section 21-152(3) of the Oklahoma Statutes.
- <sup>69</sup>Sections 22-925 and 22-1175.5(3) of the Oklahoma Statutes.
- <sup>70</sup>Section 295(1) of Chapter 161 of the Oregon Revised Statutes.
- <sup>71</sup>Sections 300 and 305 of Chapter 161 of the Oregon Revised Statutes.
- <sup>72</sup>Section 360 of Chapter 161 of the Oregon Revised Statutes.
- <sup>73</sup>Section 314(c)(1) of Title 18 of the Pennsylvania Consolidated Statutes Annotated.
- <sup>74</sup>Section 3.3(a)(5) of Title 40.1, Chapter 5 of the General Laws of Rhode Island.
- <sup>75</sup>Section 10A of Title 17, Chapter 24 of the South Carolina Code of Laws.
- <sup>76</sup>Section 20 of Title 17, Chapter 24 of the South Carolina Code of Laws.
- <sup>77</sup>Section 20(C)(b)(10) of Title 16, Chapter 3 of the South Carolina Code of Laws.
- <sup>78</sup>Sections 1 and 2 of Chapter 10A-2 of the South Dakota Codified Laws.

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- <sup>79</sup> Sections 26.1 and 26.2 of Chapter 23A-27A of the South Dakota Codified Laws.
- <sup>80</sup> Section 502 of Title 33, Chapter 5 of the Tennessee Code.
- <sup>81</sup> Section 203(a) of Title 39, Chapter 13 of the Tennessee Code.
- <sup>82</sup> Section 203(b) of Title 39, Chapter 13 of the Tennessee Code.
- <sup>83</sup> Section 1A(a) of Article 46.02 of the Texas Code of Criminal Procedure. "A person is incompetent to stand trial if the person does not have: (1) sufficient present ability to consult with the person's lawyer with a reasonable degree of rational understanding; or (2) a rational as well as factual understanding of the proceedings against the person."
- <sup>84</sup> Section 3(e) of Article 46.02 of the Texas Code of Criminal Procedure.
- <sup>85</sup> Section 4(a)(2) of Article 46.02 of the Texas Code of Criminal Procedure.
- <sup>86</sup> Article 46.03 of the Texas Code of Criminal Procedure.
- <sup>87</sup> Section 3(a) of Chapter 55 of the Texas Family Code.
- <sup>88</sup> Section 305(1) of Chapter 2 of the Utah Criminal Code.
- <sup>89</sup> Section 305(4) of Chapter 2 of the Utah Criminal Code.
- <sup>90</sup> Section 305(5) of Chapter 2 of the Utah Criminal Code.
- <sup>91</sup> Section 2 of Chapter 15 of the Utah Code of Criminal Procedure. Section 101(6) of Chapter 5 of the Utah Human Services Code defines "mentally retarded," in this context, to be: " a significant, subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested during the developmental period as defined in the current edition of the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association."
- <sup>92</sup> Section 4801(a) of Title 13, Chapter 157 of the Vermont Statutes.
- <sup>93</sup> Section 4817(2) of Title 13, Chapter 157 of the Vermont Statutes.
- <sup>94</sup> Section 182.2 of Title 19.2, Chapter 11.1 of the Code of Virginia.
- <sup>95</sup> Section 50 of Title 10, Chapter 10-77 of the Revised Code of Washington.
- <sup>96</sup> Section 10(14) of Title 10, Chapter 10-77 of the Revised Code of Washington.
- <sup>97</sup> Section 10 of Title 9A, Chapter 9A-12 of the Revised Code of Washington.
- <sup>98</sup> Section 70 of Title 10, Chapter 10-95 of the Revised Code of Washington. The statute also defines: (1) "general intellectual functioning" to mean the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning; (2) "significantly subaverage general intellectual functioning" to mean intelligence quotient seventy or below; (3) "adaptive behavior" to mean the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for his or her age; and (4) "developmental period" to mean the period of time between conception and the eighteenth birthday.
- <sup>99</sup> Section 1(a) of Chapter 27, Article 6A of the West Virginia Code.
- <sup>100</sup> Section 3 of Chapter 27, Article 6A of the West Virginia Code.
- <sup>101</sup> Section 971.15 of the Wisconsin Statutes Annotated.
- <sup>102</sup> Section 971.165 of the Wisconsin Statutes Annotated.
- <sup>103</sup> Section 304(a) of Title 7, Chapter 11 of the 2001 Wyoming Statutes.
- <sup>104</sup> Section 302(a) of Title 7, Chapter 11 of the 2001 Wyoming Statutes.
- <sup>105</sup> Section 301(a)(iii) of Title 7, Chapter 11 of the 2001 Wyoming Statutes.

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<sup>106</sup>Section 102(j)(ii) of Title 6, Chapter 2 (Wyoming Criminal Code of 1982) of the 2001 Wyoming Statutes.

1. A *Project Work Plan* describing each of the specific activity tasks to be carried out by KU research staff (including the preparation of a research bibliography) was included as Attachment A to the *Agreement for Cooperative Research*.
  2. Including services provided under the Individuals with Disabilities Education Act, Head Start, and the Child Care and Development Block Grant.
  3. Including services provided under the Individuals with Disabilities Education Act, state special education programs, and Federal vocational and adult education programs.
  4. Including services under the Vocational Rehabilitation program and the Workforce Investment Act.
  5. Including assistance provided under the Social Security Disability Insurance program, the Supplemental Security Income program and by state general assistance programs.
  6. Including services and/or assistance provided under the Medicare and Medicaid programs.
  7. These terms are used in several state special education laws and regulations as a true synonym for the term “mentally retarded.”
  8. Outside of the special education context, these terms, as used generally, are over-inclusive of the term “mental retardation.”
  9. Despite the fact that the term as most often used is clearly over-inclusive of the term “mentally retarded,” we have elected to include it because of it has been frequently suggested as a substitute term.”
  10. As is outlined in the *Project Work Plan*, research summaries will be subsequently prepared by KU research staff for each of these primary research questions.
  11. Research related to the use, definition or impact of the noun, “mental retardation,” will also encompass the use definition or impact of the adjective, “mentally retarded.”
  12. Research related to the use of alternative terms will include both the noun and adjectival forms of the term (e.g., “developmental disability” and “developmentally disabled” and “developmentally delayed”).
  13. This term will be researched within the context of state special education laws and regulations. Outside of this area, the term is used generally in an over-inclusive manner that is, thus, outside of the scope of this investigation.
  14. Other terms to describe the same population or characteristics in these contexts. E.g., “mental deficiency,” “mental disability,” “developmental disability,” “intellectual disability.”
  15. Other terms to describe the same population or characteristics in these contexts. E.g., “mental deficiency,” “mental disability,” “developmental disability,” “intellectual disability.”
1. This category includes survey or interviews conducted by national data-gathering organizations.
  2. The Individuals with Disabilities Education Act of 1997, as amended.
  3. The Workforce Investment Act of 1998, as amended.
  4. Operated under the Rehabilitation Act of 1973, as amended.
  5. Title XVI of the Social Security Act, as recently amended by the *Ticket to Work and Work Incentives Improvement Act of 1999*.
  6. Title II of the Social Security Act, as recently amended by the *Ticket to Work and Work Incentives Improvement Act of 1999*.
  7. A *General Assistance (GA)* program is a cash and in-kind assistance program that: (1) is financed and administered entirely by the state, county, or locality in which it operates; (2) is designed to meet the short-term or ongoing needs of low-income persons ineligible for (or awaiting approval for) federally funded cash assistance; (3) provides assistance for

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at least two consecutive months. While this definition includes *interim assistance*, it does not include state-segregated or state-separate TANF programs.

<sup>8</sup>. Title XIX of the Social Security Act, as amended, including both the Long-term Care and Home and Community-Based Services Waiver programs.