



General Statutes Commission

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MEMORANDUM

To: Senate Judiciary
From: General Statutes Commission
Re: SB 556 (GSC People First Language 2019)
Date: April 25, 2019

General Comments

People First drafting is a drafting convention in which a person with a disability is described as a person first and is not equated with the person's disability. People First drafting also avoids derogatory language when describing a person's disability. This bill implements People First drafting by changing the phrase "mental retardation" to "intellectual disability" or "intellectual or other developmental disability" in statutes relating to the provision of services and makes further People First language, technical, and clarifying amendments in those statutes. In certain statutes relating to the provision of services, "intellectual or other developmental disability" is a more precise replacement term than "intellectual disability" alone.

Advocates for people with disabilities across the nation have been recommending the use of People First language for years. In S.L. 2009-264, the General Assembly directed the General Statutes Commission to study this issue and recommend People First drafting changes; the Commission recommended such a bill, which was enacted as S.L. 2011-29. This bill did not change the term "mental retardation," because at that time that term was still in use by the health care community. In 2010, the U.S. Congress enacted a law to replace "mental retardation" with "intellectual disability" or "intellectual disabilities" in the U.S. Code. Rosa's Law, Pub. L. No. 111-256. Later, in 2013, the American Psychiatric Association published the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, (DSM-5), which also replaced "mental retardation" with "intellectual disability." Last year, the General Statutes Commission recommended a People First language bill that replaced "mental retardation" with "intellectual disability" in statutes that did not relate to the provision of services, which the General Assembly enacted as S.L. 2018-47. This bill complements that bill by changing the term "mental retardation" to "intellectual disability" or "intellectual or other developmental disability" in statutes relating to the provision of services.

In preparing this bill, the General Statutes Commission consulted with the Department of Health and Human Services and Dr. Patricia Porter, former Senior Policy Advisor to Representative Donny Lambeth. The Commission also circulated a previous draft to the Department of Transportation, the Department of Public Safety, the Department of Justice, the Department of Administration, the North Carolina Conference of District Attorneys, and the Health Law Section and the Elder and Special Needs Law Section of the North Carolina Bar Association. Previous drafts were published on the Commission's website. The Commission is unaware of any opposition to this bill.

The technical and clarifying amendments consist of (i) replacing legalese with plain English, (ii) shortening phrases and eliminating technically unnecessary language, (iii) rephrasing unclear language, (iv) making language gender neutral, (v) modernizing the format of definitions and other lists, (vi) fixing citations and correcting the format of citations, (vii) making technical amendments

to conform to this State's drafting conventions, (viii) making stylistic updates to improve readability, (ix) making conforming changes, (x) fixing punctuation and capitalization, (xi) adding Oxford commas, (xii) clarifying ambiguous references, (xiii) correcting misspellings, (xiv) eliminating an unused definition, (xv) eliminating "garbage language" caused by conflicting amendments, (xvi) correcting a typographical error, (xvii) making the formatting of a section more uniform, and (xviii) adding the phrase "behavioral health . . . services," which is a fairly recent term that consists of mental health and substance abuse services, in two lists where both of these types of services are already included under current law.

Specific Comments

Please note that this memorandum lists the primary amendments to each G.S. section first and then lists the rest of the amendments in the order in which they appear in the bill.

Part I of the bill consists of the following amendments to Chapter 122C of the General Statutes:

Section 1 amends G.S. 122C-3 to do the following:

- Replace the term "mental retardation" in subdivision (22) with the new term "intellectual disability," recodify the definition as a new subdivision (17a) to maintain alphabetical order, and amend the definition to clarify that an intellectual disability is a developmental disability.
- In subdivision (21), replace "mental retardation" with "an intellectual disability," tabulate a list for improved readability, make language gender neutral, and replace "youth" with "minor" to be consistent with the rest of the subdivision.
- Throughout the statute, modernize the format of definitions.
- In subdivision (3), replace legalese with plain English.
- In subdivision (10), make language gender neutral.
- In subdivision (11), modernize the format of a list and make language gender neutral.
- In subdivision (12a), modernize the format of a list and add an Oxford comma.
- In subdivision (13c), modernize the format of a list and fix an incorrect citation. G.S. 115C-106.4 does not exist; given the context, the reference should be to G.S. 115C-107.1(c).
- In subdivision (14), make other People First language changes, modernize the format of a list, fix punctuation, and rephrase unclear language.
- In subdivision (20), tabulate a list for improved readability, fix punctuation, eliminate the word "a" to make items in a list parallel, and replace legalese with plain English.
- Eliminate the definition of "mentally retarded with accompanying behavior disorder" in subdivision (23) since that term is not used.
- In subdivision (24), make language gender neutral and replace legalese with plain English.
- In subdivision (27), fix the format of a citation.
- In subdivision (30a), fix the format of a citation and fix an incorrect citation.

Section 2 amends G.S. 122C-57 to do the following:

- In subsection (a), replace the unclear phrase "treatment for mental health, mental retardation, and substance abuse illness or disability" with "treatment for a mental illness, an intellectual or other developmental disability, substance abuse, or a combination thereof."
- In subsection (e), modernize the format of a list.

Section 3 amends G.S. 122C-63 to do the following:

- In the catchline and in subsections (a) and (b), replace "mental retardation" with "intellectual disability" or "intellectual disabilities."
- In subsections (d) and (e), replace "State facility for the mentally retarded" with "State developmental center." G.S. 122C-181, which lists the various types of State-operated facilities, describes these facilities as "Developmental Centers."
- In subsection (a), capitalize "state-appropriated" to conform to this State's drafting conventions.
- In subsection (b), make language gender neutral and modernize the format of a list.
- In subsection (c), modernize the format of a list, add a missing comma, and rephrase unclear phrasing.
- In subsection (g), modernize the format of a list.

Section 4 and **Section 5** amend G.S. 122C-202 and G.S. 122C-203, respectively, to replace being "mentally retarded . . . developmentally disabled" with having "an intellectual or other developmental disability" and to make other People First language changes.

Section 6 amends G.S. 122C-241 to do the following:

- In subsection (c), replace "State facility for the mentally retarded" with "State developmental center" and make language gender neutral.
- In subsection (a), add a missing comma, make other People First language changes, and make language gender neutral.
- In subsection (b), make another People First Language change and add an Oxford comma.

Section 7 amends G.S. 122C-261 to do the following:

- In subsections (a), (b), (d), and (f), replace being "mentally retarded" with having "an intellectual disability" and make other People First language changes.
- In subsection (f), modernize the format of a list and make language gender neutral.

Section 8 amends G.S. 122C-262 to do the following:

- In subsections (b) and (d), replace being "mentally retarded" with having "an intellectual disability."
- In subsection (a), make another People First language change.
- In subsection (d), make other People First Language changes, fix the format of a citation, shorten the phrase "in accordance with the provisions of G.S. 122C-251" to "in accordance with G.S. 122C-251," modernize the format of a list, and make language gender neutral.
- In subsection (e), shorten "under the provisions of this section" to "under this section."
- In subsection (f), replace legalese with plain English.

Section 9 amends G.S. 122C-263 to do the following:

- In subsection (c), replace "mental retardation" with "intellectual disability" and add an Oxford comma.
- In subsection (d), replace being "mentally retarded" with having "an intellectual disability," modernize the format of two lists, make other People First language changes, add a missing comma, replace "may not" with "shall not" to be consistent with this State's drafting conventions, and make language gender neutral.
- In subsection (a), eliminate "garbage language." Both Section 24 of S.L. 2018-33 and Section 3.2(a) of S.L. 2018-76 amended this subsection. The later act did not, however, take into account the amendments made to this subsection by the earlier act, and the

language the later act added to this subsection was similar but not identical to the language added by the earlier act, resulting in garbage language. This bill eliminates the garbage language so that this subsection is set out according to the amendments in S.L. 2018-76, the later-enacted session law.

- In subsection (a), make other People First language changes.

Section 10 amends G.S. 122C-271 to do the following:

- In subsection (b), replace being "mentally retarded" with having "an intellectual disability," make other People First language changes, add an Oxford comma, replace legalese with plain English, and fix a typographical error.
- In subsection (a), make another People First language change, make language gender neutral, and replace legalese with plain English.
- In subsection (c), make language gender neutral.

Part II consists of the following amendments to statutes outside Chapter 122C of the General Statutes:

Section 11 amends G.S. 7B-2502(c) to replace "mental retardation center" with "State developmental center," to make other People First language changes, to add commas to improve readability, and to replace legalese with plain English.

Section 12(a) amends G.S. 14-32.2 to do the following:

- Recodify the definitions in subsections (c) through (e1) in a new subsection (i) that includes introductory language stating that the definitions apply to this statute, and in the definition of "health care facility," replace "the mentally retarded" with "individuals with intellectual disabilities."
- Add "definitions" in the catchline since the statute includes definitions.
- In subsection (a), replace legalese with plain English.
- In subsection (b), modernize the format of a list.
- In subsection (f), fix the format of a citation and replace legalese with plain English.
- In subsection (g), make a phrase lowercase.
- In subsection (h), replace legalese with plain English.

Section 12(b) amends G.S. 90-106 to do the following:

- In subdivision (a1)(2) and subsection (a3), make a conforming change to the reorganization of G.S. 14-32.2 in **Section 12(a)** of the bill.
- Add subsection catchlines throughout the statute.
- Recodify the existing text of subsection (a) as the first sentence of subsection (b).
- Recodify the definitions in subsection (a4) as subsection (a) and fix the introductory language to state that the definitions apply in this statute.
- In subsection (a1), replace legalese with plain English and fix the format of citations.
- In subsection (a3), replace "may not" with "shall not" to be consistent with this State's drafting conventions and replace legalese with plain English.
- In subsection (a5), replace legalese with plain English.
- In subsection (b), replace "drugs" with "controlled substances" since "controlled substances" is the term used elsewhere throughout the statute.
- In subsection (b), replace the phrase "No . . . may be" with "No . . . shall be" to be consistent with this State's drafting conventions.

- In subsection (c), fix the format of a citation, replace legalese with plain English, and replace "may not" with "shall not" to be consistent with this State's drafting conventions.
- In subsections (d) and (e), replace the phrase "No . . . may be" with "No . . . shall be" to be consistent with this State's drafting conventions.
- In subsections (f) through (i), replace legalese with plain English.

Section 12(c) provides that **Section 12** becomes effective January 1, 2020, and applies to offenses committed on or after that date.

Section 13(a) amends G.S. 58-55-35 to do the following:

- In subdivision (a)(11), replace "the mentally retarded" with "individuals with intellectual disabilities."
- Throughout subsection (a), modernize the format of definitions and replace legalese with plain English.
- In subdivision (a)(8), change "Home health services" to "Home care services" to conform to the change in terminology in G.S. 131E-136(3) by Section 1 of Chapter 59 of the 1991 Session Laws.
- In subdivision (a)(9), make "Providing" lowercase since it appears after a colon.
- In subdivisions (a)(13) and (a)(14), make other People First language changes.
- In subdivision (a)(15), replace the reference to G.S. 135-40.1(18) with the substance of that definition because Section 3(d) of S.L. 2008-168 repealed G.S. 135-40.1.
- In subdivision (a)(16), replace "which" with "that" and make another People First language change.
- In subsection (b), rephrase unclear phrasing, fix punctuation, and replace legalese with plain English.

The Department of Insurance reviewed an earlier draft of this section and indicated that it had no objection to these amendments.

Section 13(b) provides that **Section 13** becomes effective October 1, 2019, and applies to contracts entered into on or after that date.

Section 14 amends G.S. 108A-101(d) to replace "mental retardation" with "intellectual disability."

Section 15 amends G.S. 115C-108.1 to do the following:

- In subsection (c), replace "mental retardation center" with "developmental center."
- In subsections (d) and (e), replace "Departments of Health and Human Services" with "Department of Health and Human Services." This phrase originally referred to multiple departments; however, S.L. 2012-83, ss. 38 and 39, amended this phrase to refer only to a single department but did not make the word "Departments" singular.

Section 16 amends G.S. 131D-10.4 to do the following:

- In subdivision (2), replace "the . . . mentally retarded" with "individuals with . . . intellectual or other developmental disabilities" and make other People First language changes.
- In the introductory language, replace legalese with plain English.
- Throughout the statute, modernize the format of the list.
- In subdivision (1), replace "laws of the State of North Carolina" and "laws of North Carolina" with "laws of this State" to be consistent with this State's drafting conventions.

Section 17 amends G.S. 131D-31 to do the following:

- In subdivision (b)(3), replace "mental retardation" with "intellectual or other developmental disabilities."
- In subsection (a), make another People First language change.
- In subdivisions (b)(4) and (b)(5) and subsection (c), make certain phrases lowercase.
- In subsections (g) and (i), replace legalese with plain English.
- In subsection (i), add a subsection catchline to match the rest of the section, add the missing word "an," and clarify an ambiguous reference.

Section 18 amends G.S. 131E-154.2 to do the following:

- In subdivision (3), replace "the mentally retarded" with "individuals with intellectual disabilities" and fix punctuation.
- In the introductory language, replace legalese with plain English.
- Throughout the statute, modernize the format of the list.
- In subdivision (4), make language gender neutral.

Section 19 amends G.S. 131E-176 to do the following:

- In subdivisions (9b), (9c), and (14a), replace "the mentally retarded" with "individuals with intellectual disabilities."
- In the introductory language, replace legalese with plain English.
- Throughout the statute, modernize the format of definitions.
- In subdivision (1), fix the format of a citation and make another People First language change.
- In subdivision (1b), add an Oxford comma, eliminate technically unnecessary references, and fix the format of a citation. The references in this subdivision to other statutes' definitions of "operating room" and "gastrointestinal endoscopy room" are technically unnecessary, because this statute duplicates those definitions.
- In subdivision (1c), add an Oxford comma.
- In subdivision (3), replace legalese with plain English.
- In subdivision (5), tabulate a list for improved readability and eliminate a technically unnecessary reference.
- In subdivision (5a), make other People First language changes, modernize the format of a list, fix the format of citations, split up sentences for improved readability, replace legalese with plain English, and add an Oxford comma.
- In subdivision (5b), replace legalese with plain English.
- In subdivision (9a), rephrase unclear phrasing and make other People First language changes.
- In subdivision (10), modernize the format of a list and clarify an ambiguous reference.
- In subdivision (12), which contains two definitions, recodify the second definition as a new subdivision (12a).
- In new subdivision (12a), fix the format of a citation, modernize the format of a list, add a missing comma, clarify an ambiguous reference, make language gender neutral, and replace legalese with plain English.
- In subdivision (13), fix the format of a citation.
- In subdivision (13a), add an Oxford comma.
- In subdivision (13b), fix the format of a citation.
- In subdivision (14o), eliminate a technically unnecessary reference.

- In subdivision (16), eliminate a technically unnecessary reference, replace legalese with plain English, and fix the format of citations.
- In subdivision (17a), modernize the format of a list and make other People First language changes.
- In subdivision (18), make language gender neutral and make a stylistic change to improve readability.
- In subdivision (19), fix punctuation.
- In subdivision (20), eliminate a technically unnecessary reference.
- In subdivisions (21) and (22), make other People First language changes.

Section 20 amends G.S. 131E-184 to do the following:

- In subdivision (e)(1), replace "the mentally retarded" with "individuals with intellectual disabilities" and modernize the format of a list.
- In subsection (a), fix the format of a citation.
- In subsection (c), modernize the format of a list, rephrase unclear phrasing, and make a phrase lowercase.
- In subsection (h), make a phrase lowercase.

Section 21 amends G.S. 131E-186(a) to replace "the mentally retarded" with "individuals with intellectual disabilities" and to rephrase unclear phrasing.

Section 22 amends G.S. 131E-214.1 to do the following:

- In subdivision (3), replace "medical type "PSY-3" (mental retardation)" with "medical type "PSY-3" (intellectual/developmental disability)."
- Throughout the statute, modernize the format of definitions.
- In subdivision (2), fix the format of a citation.
- In subdivision (4), correct a misspelling.
- In subdivision (6), replace legalese with plain English.

Section 23 amends G.S. 136-18 to do the following:

- In subdivision (25), replace "retarded centers" with "developmental centers," replace legalese with plain English, capitalize the phrase "state-owned" to conform to this State's drafting conventions, clarify an ambiguous reference, and correct a misspelling.
- In the introductory language, replace legalese with plain English.
- In subdivision (2), modernize the format of a list, add Oxford commas, and replace legalese with plain English.
- In subdivision (3), replace legalese with plain English, fix punctuation, and fix the format of a citation.
- In subdivision (5), add Oxford commas and replace legalese with plain English.
- In subdivision (7), replace legalese with plain English.
- In subdivision (9), add Oxford commas, replace legalese with plain English, fix the format of a reference to a division of a State agency, and fix the format of a citation.
- In subdivisions (10) and (11), fix punctuation and replace legalese with plain English.
- In subdivision (12), amend the introductory language to conform to the format of the rest of the statute, replace legalese with plain English, add an Oxford comma, and replace the ambiguous word "things" with "acts."

- In subdivision (12a), amend the introductory language to conform to the format of the rest of the statute, replace legalese with plain English, clarify an ambiguous reference, and fix the format of citations.
- In subdivision (12b), replace legalese with plain English.
- In subdivision (13), amend the introductory language to conform to the format of the rest of the statute.
- In subdivisions (14), (15), and (16), amend the introductory language to conform to the format of the rest of the statute and replace legalese with plain English.
- In subdivision (17), replace legalese with plain English and capitalize the phrase "state-maintained" to conform to this State's drafting conventions.
- In subdivision (19), replace legalese with plain English.
- In subdivision (20), amend the introductory language to conform to the format of the rest of the statute, replace legalese with plain English, and capitalize the phrase "state-maintained" to conform to this State's drafting conventions.
- In subdivision (21), replace legalese with plain English.
- In subdivision (22), replace legalese with plain English, add Oxford commas, and clarify an ambiguous reference.
- In subdivision (23), replace legalese with plain English, add Oxford commas, and replace "the State of North Carolina" with "this State" to be consistent with this State's drafting conventions.
- In subdivision (24), amend the introductory language to conform to the format of the rest of the statute and capitalize the phrase "state-maintained" to conform to this State's drafting conventions.
- In subdivision (26), replace legalese with plain English and add an Oxford comma.
- In subdivision (27), amend the introductory language to conform to the format of the rest of the statute, add Oxford commas, and replace legalese with plain English.
- In subdivision (28), amend the introductory language to conform to the format of the rest of the statute and fix punctuation.
- In subdivision (29), amend the introductory language to conform to the format of the rest of the statute.
- In subdivision (29a), fix punctuation and replace legalese with plain English.
- In subdivision (30), fix the format of a citation and replace legalese with plain English.
- In subdivision (31), amend the introductory language to conform to the format of the rest of the statute, add an Oxford comma, modernize the format of a list, and fix incorrect citations.
- In subdivision (32), amend the introductory language to conform to the format of the rest of the statute.
- In subdivision (33), replace legalese with plain English.
- In subdivision (34), amend the introductory language to conform to the format of the rest of the statute.
- In subdivision (36), replace legalese with plain English, amend the introductory language of sub-subdivision c. to conform to the format of the rest of the subdivision, and shorten the phrase "pursuant to the provisions of sub-subdivisions . . ." to "pursuant to sub-subdivisions"
- In subdivision (37), replace legalese with plain English and make a phrase lowercase.
- In subdivision (39), correct the name of a legislative committee and replace legalese with plain English.

- In subdivision (39a), replace legalese with plain English, clarify an ambiguous reference, fix the format of a citation, capitalize "project" in the phrase "Turnpike project" to be consistent with the rest of the subdivision, and add the missing word "the."
- In subdivision (43), replace legalese with plain English and make a word lowercase.
- In subdivision (44), amend the introductory language to conform to the format of the rest of the statute and replace legalese with plain English.

The Department of Transportation reviewed this section and indicated that it had no objection to these amendments.

Section 24 amends G.S. 143-64.02 to do the following:

- In subdivision (2), replace "the mentally retarded" with "individuals with intellectual or other developmental disabilities," fix the format of a citation, and make another People First language change.
- In the introductory language, replace legalese with plain English.
- Throughout the statute, modernize the format of definitions.

Section 25 amends G.S. 143-64.2 to do the following:

- In subsection (a), replace "the mentally retarded" with "individuals with intellectual or other developmental disabilities," replace legalese with plain English, modernize the format of a list, fix the format of a citation, and make another People First language change.
- In subsection (d), replace legalese with plain English and add an Oxford comma.
- In subsection (e), replace legalese with plain English, add the missing word "a," and replace the unclear phrase "the consummation or acquisition or transactions hereunder" with "transactions for the acquisition of federal surplus property." This phrase mirrors comparable language in G.S. 143-64.03(b), the parallel statute on State surplus property.

Section 26 amends G.S. 143-117 to replace "mental retardation centers" with "developmental centers," to add an Oxford comma, and to make another People First language change.

Section 27 amends G.S. 143-117.1 to do the following:

- In subdivision (3), replace "mental retardation centers" with "developmental centers" and make another People First language change.
- In the introductory language, replace legalese with plain English.
- Throughout the statute, modernize the format of definitions.
- In subdivision (1), add an Oxford comma.

Section 28 amends G.S. 148-19 to do the following:

- In subsection (d), replace "mental retardation services" with "intellectual and other developmental disability services" and replace legalese with plain English.
- In subsection (a), add Oxford commas.
- In subsection (b), make a stylistic update to improve readability.
- In subsection (c), replace legalese with plain English.

Section 29 amends G.S. 148-22 to do the following:

- In subsection (a), replace "mentally retarded prisoners" with "prisoners with intellectual or other developmental disabilities," add an Oxford comma, replace legalese with plain English, and make language gender neutral.

- In subsection (b), replace "mental retardation . . . services" with "intellectual and other developmental disability . . . services," add Oxford commas, and replace legalese with plain English. This section also adds the phrase "behavioral health . . . services," which is a fairly recent term that consists of mental health and substance abuse services; both of these types of services are already included in the list of services set out in this statute.

Section 30 amends G.S. 153A-221(a) to replace "mental retardation . . . services" with "intellectual and other developmental disability . . . services" and to modernize the format of a list. This section also adds the phrase "behavioral health . . . services," which is a fairly recent term that consists of mental health and substance abuse services; both of these types of services are already included in the list of services set out in this statute.

The Department of Public Safety reviewed **Sections 28, 29, and 30** and indicated that it had no objections to these amendments.

Section 31 amends G.S. 153A-248(a) to replace "the mentally retarded" and "the . . . mentally handicapped" with "individuals with intellectual or other developmental disabilities," to make other People First language changes, to modernize the format of a list, and to replace legalese with plain English.

Section 32 amends G.S. 159-48 to do the following:

- In subsection (b), replace "the mentally retarded" with "individuals with intellectual or other developmental disabilities" and replace legalese with plain English.
- In subsection (a), replace legalese with plain English.
- In subsection (c), replace legalese with plain English and replace "No . . . may" with "No . . . shall" to be consistent with this State's drafting conventions.
- In subsection (d), replace legalese with plain English, add an Oxford comma, rephrase unclear language, replace "within this State or without" with "inside or outside the State" and replace "No . . . may" with "No . . . shall" to be consistent with this State's drafting conventions.
- In subsection (e), fix punctuation and replace legalese with plain English.
- In subsection (f), modernize the format of a list.
- In subsection (g), clarify ambiguous references and replace legalese with plain English.
- In subsection (h), modernize the format of a list and replace legalese with plain English.
- In subsection (i), clarify an ambiguous reference.

Part III consists of the following savings provision and effective date provision:

Section 33 provides that this act does not affect the coverage, eligibility, rights, responsibilities, or provision of State or federal services or benefits for individuals who have been diagnosed with mental retardation and whose diagnosis has not been changed to a diagnosis of intellectual disability.

Section 34 provides that except as otherwise provided, this act becomes effective October 1, 2019, and applies to proceedings commenced or services rendered on or after that date.