2011 SENATE HUMAN SERVICES

SB 2142

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2142
1-17-2011
Job Number 12965 and 12984

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to changing mental retardation to intellectual disability.

Minutes: Attached testimony.

Vice Chairman, Senator Gerald Uglem, opened the hearing on SB 2142.

Senator Judy Lee, District 13, introduced SB 2142 and explained it is strictly an update of statute. It removes all of the obsolete and antiquated language which refers to mental retardation with what is considered much more appropriate which is dealing with individuals with intellectual disabilities.

There was discussion on the people first preference and whether it had any impact on the way statute is drafted. **Senator Judy Lee** felt Legislative Council should be consulted to make sure it wouldn't change anything inappropriately with form and style.

Senator Spencer Berry asked if this would have financial impact on insurers, or the state at some point if something becomes officially a disability as opposed to another term.

Senator Judy Lee deferred to Dept. of Human Services or BC/BS. She did say that this isn't really intended to make any changes in coverage or benefits or services provided. It is strictly changing the terminology in definitions area.

Senator Tim Mathern, District 11 and co-sponsor, explained that the term "retarded" has really become a negative word – a word that people use outside of describing a condition. Words do make a difference. This bill is important to move us, as a society, towards describing these types of disabilities in the proper format.

Senator Spencer Berry, District 27, a family practice physician and urgent care physician, pointed out the use of language and how important it is in perception. He feels this seeks to make the language more objective and less subjective.

Veronica Zietz, Executive Director at The Arc of Bismarck, provided supporting testimony and requested an amendment. Attachment #1

Senator Tim Mathern asked if she had a list of all the changes she was suggesting.

Ms. Zietz said she would provide the information for the committee.

Senator Dick Dever asked if this is consistent with federal law and if there are references in the insurance world where changing the term might affect somebody's eligibility.

Ms. Zietz answered that, in regards to federal legislation, Rosa's Law is going to change things as they come up. She said it should not affect eligibility.

Senator Dick Dever asked if this changes the term "developmentally disabled" which is also used.

Ms. Zietz replied that this is a bill that strictly deals with the term "mental retardation" and changing it to "intellectual disability".

Senator Spencer Berry asked if this will change the individual's legal status in relationship to the American Disabilities Act.

Ms. Zietz explained that this is strictly a terminology change. It was her understanding that there won't be more people falling into the category. She didn't think there would be more people served or would affect the current level of services provided by the state. She did note that she was not an expert and suggested somebody from the dept. would be better able to answer the question.

Helen Bechold, Grand Forks, spoke in support. Attachment #2.

Bev Koller, Grand Forks, spoke in support. Attachment #3.

Tracy Livingood, Grand Forks, spoke in support. Attachment #4.

John Birkeland, Fargo, spoke in support. Attachment #5.

Senator Dick Dever said it seems that sometimes people use the wrong word because they don't know the right word. He talked about a resolution he had sponsored and explained they could change the Century Code in session but the Constitution is a different matter. One of the reasons he sponsored it is because the language is offensive. He also felt it is an opportunity on a statewide vote to provide an education to people.

Mr. Birkeland responded that they speak around the state and it is something that is brought to their attention all the time. This has become, instead of a scientific term, a negative term.

Senator Dick Dever explained Resolution 4006 at the request of Senator Judy Lee.

Cathy Haarstad, Pathfinder Parent Center & ND FamNet, provided supporting testimony. Attachment #6.

Nancy Miller, National Association of Social Workers (NASW), spoke in favor of SB 2142. Attachment #7

Roxanne Romanick, Designer Genes of ND, Inc., spoke in support of SB 2142. Attachment #8

Corinne Hofmann, Protection and Advocacy Project (P&A), gave supporting testimony, Attachment #9

Tina Bay, Dept. of Human Services, gave background information and support for SB 2142. Attachment #10

Gerry Teevens, Department of Public Instruction, spoke in support of SB 2142. Attachment #11

Traves Einarson, Grand Forks, spoke in support. Attachment #12

JoAnne Hoesel, Dept. of Human Services, gave supporting testimony. Attachment #13

Julie Leer, Attorney with the Dept. of Human Services, spoke to the question about any issues with changing to the people first language. She said the only thing they would suggest is to make sure it fits contextually within the rest of the section.

There was no further testimony. The hearing on SB 2142 was closed.

The intern was asked to visit with legislative council to prepare an amendment addressing the people first concerns and other concerns about multiple distasteful references to individuals with mental illness, emotional disturbances, and physical disabilities in this bill.

Job Number 12984.

SB 2142 was opened for discussion.

The amendment prepared by the intern was reviewed and noted that the title also needed to be corrected. The amendment would make this people first language. The people first language means that the individual or person is the most important and the disability is secondary. It has become more appropriate to be sensitive to the individuals with a disability or illness and talk about the person first and the condition second.

The changes recommended by Veronica Zeitz were not possible without changing the whole code.

The amendments are to bring this into compliance with people first language and the bill itself is to remove "mental retardation" and use "intellectual disability".

Senator Tim Mathern moved to **accept the amendments prepared by the intern.**

Seconded by **Senator Gerald Uglem**.

Roll call vote 5-0-0. **Amendment adopted.**

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2142
1-19-2011
Job Number 13017

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to changing mental retardation to intellectual disability.

Minutes: Attachments

Senator Judy Lee opened SB 2142 for committee work.

New amendments from Veronica Zietz were discussed. Attachment #14

Senator Dick Dever felt the amendments, even though well intentioned, took them down a path that goes beyond where they were headed. He suggested that if they address them they do it at another time.

Discussion continued on page 10, line 2. Overstrike "handicap" and insert "disability"

Senator Tim Mathern moved to **re-amend as discussed.**

Seconded by **Senator Gerald Uglem.**

Roll call vote 5-0-0. **Amendment adopted.**

An amendment from Bob Puyear was considered. Attachment #15 Nothing was done with his suggestions.

Senator Tim Mathern moved a **Do Pass as Amended twice.**

Seconded by **Senator Dick Dever.**

Roll call vote 5-0-0. **Motion carried.**

Carrier is **Senator Tim Mathern.**

Attachment #16 – three additional pieces of supporting testimony.

PROPOSED AMENDMENT TO SENATE BILL NO. 2142

Page 9, line 5, remove "the"

Page 9, line 6, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 9, line 14, remove "the"

Page 9, line 14, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 9, line 24, remove "the"

Page 9, line 24, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 11, line 8, remove "the"

Page 11, line 9, insert "individuals who are" directly before "intellectually"

Page 11, line 9, insert "who are" after "or"

Page 11, line 2, remove "the"

Page 11, line 2, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 11, line 24, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 12, line 2, remove "the"

Page 12, line 2, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 12, line 24, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 13, line 15, remove the second "the"

Page 13, line 16, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 13, line 17, remove "the"

Page 13, line 17, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 13, line 29, remove "the"

Page 13, line 30, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 14, line 4, remove "the"

Page 14, line 5, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 14, line 8, remove "the"

Page 14, line 8, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 14, line 15, remove "the"

Page 14, line 16, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 14, line 23, replace "or" with ","

Page 14, line 23, after "disability" insert ","

Page 14, line 23, after the second "," insert "or an individual with intellectual disabilitities"

Date: 1-17-2011

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2142

Senate **HUMAN SERVICES** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Amendment by intern

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By **Sen.** Mathern Seconded By **Sen.** Uglem

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		**Sen. Tim Mathern**	✓	
Sen. Gerald Uglem, V. Chair	✓				
Sen. Dick Dever	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

Date: 1-18-2011

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2142

Senate **HUMAN SERVICES** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number pg. 10 line 2

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment Re amend

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By **Sen.** Mathern Seconded By **Sen.** Uglem

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		**Sen. Tim Mathern**	✓	
Sen. Gerald Uglem, V. Chair	✓				
Sen. Dick Dever	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment

If the vote is on an amendment, briefly indicate intent:

11.8166.01001
Title.02000

Adopted by the Human Services Committee

January 20, 2011

1-20-11
1 of 2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2142

Page 1, line 10, replace "intellectually disabled" with "individual with an intellectual disability"

Page 9, line 5, overstrike "the"

Page 9, line 6, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 9, line 14, overstrike "the"

Page 9, line 14, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 9, line 24, overstrike "the"

Page 9, line 24, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 10, line 2, overstrike "handicap" and insert immediately thereafter "disability"

Page 11, line 8, overstrike "the"

Page 11, line 9, after "~~retarded~~" insert "individuals who are"

Page 11, line 9, after "or" insert "who are"

Page 12, line 2, overstrike "the"

Page 12, line 2, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 12, line 24, remove "intellectually"

Page 12, line 25, replace "disabled" with "individuals with intellectual disabilities"

Page 13, line 15, overstrike the second "the"

Page 13, line 16, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 13, line 17, overstrike "the"

Page 13, line 17, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 13, line 28, overstrike "the"

Page 13, line 29, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 14, line 4, overstrike "the"

Page 14, line 5, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 14, line 8, overstrike "the"

Page 14, line 8, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 14, line 15, overstrike "the"

Page 14, line 16, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 14, line 23, replace "or" with a comma

Page 14, line 23, after "disability""insert ", or "individual with intellectual disabilities""

Renumber accordingly

Date: 1-19-2011

Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2142

Senate **HUMAN SERVICES** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By **Sen.** Mathern Seconded By **Sen.** Dever

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		**Sen. Tim Mathern**	✓	
Sen. Gerald Uglem, V. Chair	✓				
Sen. Dick Dever	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Senator Mathern

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2142: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2142 was placed on the Sixth order on the calendar.

Page 1, line 10, replace "intellectually disabled" with "individual with an intellectual disability"

Page 9, line 5, overstrike "the"

Page 9, line 6, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 9, line 14, overstrike "the"

Page 9, line 14, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 9, line 24, overstrike "the"

Page 9, line 24, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 10, line 2, overstrike "handicap" and insert immediately thereafter "disability"

Page 11, line 8, overstrike "the"

Page 11, line 9, after "~~retarded~~" insert "individuals who are"

Page 11, line 9, after "or" insert "who are"

Page 12, line 2, overstrike "the"

Page 12, line 2, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 12, line 24, remove "intellectually"

Page 12, line 25, replace "disabled" with "individuals with intellectual disabilities"

Page 13, line 15, overstrike the second "the"

Page 13, line 16, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 13, line 17, overstrike "the"

Page 13, line 17, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 13, line 28, overstrike "the"

Page 13, line 29, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 14, line 4, overstrike "the"

Page 14, line 5, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 14, line 8, overstrike "the"

Page 14, line 8, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 14, line 15, overstrike "the"

Page 14, line 16, replace "intellectually disabled" with "individuals with intellectual disabilities"

Page 14, line 23, replace "or" with a comma

Page 14, line 23, after "disability""insert ", or "individual with intellectual disabilities""

Renumber accordingly

2011 HOUSE HUMAN SERVICES

SB 2142

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

SB 2142
March 8, 2011
Job #15078

☐ Conference Committee

Committee Clerk Signature Carmen Hart

Explanation or reason for introduction of bill/resolution:

Changing mental retardation to intellectual disability.

Minutes: See attached Testimony #1-

Chairman Weisz: Opened the hearing on SB 2142.

Sen. J. Lee: From District 13 introduced and testified in support of the bill. What this bill does is updates the term to mental retardation to a more appropriate way to describe someone with a intellectual disability. We have even had contacts from a student group at a high school who was working on making the public more aware of the importance of using the more respectful terminology when we are referring to individuals with disabilities. I encourage favorable review on this.

Chairman Weisz: My intern was kind enough to point out to me that you sent 2268 over to us and it has a section there for the mentally retarded.

Sen. J. Lee: It will be automatically fixed if this bill is passed.

Rep. Holman: Is this terminology going to be used in textbooks and training? Is this what we are going to move to or is this plan to move to it?

Sen. J. Lee: It is already used in some areas. I think it is important to give credit to the Dept. of Human Services who recognize that this needed to be updated and had been putting this information together for several months before the session. This is pretty much universally used.

Rep. Paur: Mental retardation has a very definite definition. Occurrence has to be before the age of 18 and IQ less than 70, etc. I couldn't find a definite definition for intellectual disability. Are we broadening the scope of the intellectual disability?

Sen. J. Lee: I can't answer that.

Rep. Damschen: I feel like that is not a very good definition. I know people who are special needs people but they don't necessarily have an intellectual disability.

Sen. J. Lee: It isn't referring to everybody who has special needs either. We had a lot of support for this in the committee when we heard this bill from the various organizations that support the needs of people with special needs and many of whom have intellectual disabilities. It is not intended to be anything, but positive. It was brought to the department and to the sponsors as the appropriate change to make because individuals who have been called mentally retarded find that phrase to be preteritive. They do not want that phrase used anymore. It is insulting.

Rep. Damschen: I understand your reasoning. It's like we are trying to make this politically correct. It is the people who misuse the term and put a negative connotation on whatever it is. I am kind of stubborn about changing because someone is abusing it. Either one, mental retardation or intellectual disability, doesn't have to be negative unless we let it be and someone else uses it in a negative context.

Sen. J. Lee: I share your thoughts on that. Gay use to mean happy, but the meaning has changed. Whapeton used to be called Whap, but now is no longer acceptable. The folks who were using that sports mascot term for many years never intended it to be anything other than just an abbreviation of the name of the town. It is an evolution of language. The term mental retardation has become unacceptable and because of that even though we never have intended it for it to be negative, it has become negative so we are evolving into a new way of describing it.

Rep. Schmidt: Could we change special education terminology to something more appropriate?

Sen. J. Lee: I don't want to go there. Maybe your committee could deal with that if they want to. There are lots of different programs under that special education umbrella. It brings to mind the fact that we need to be cognizant of the language we use and the fact that it shouldn't treat people as different in a bad sense. We are all unique. That is a good thing, but we don't want to be different in the wrong way.

Rep. Holman: The word disability does seem appropriate to me. My disabilities if someone applies that to me are probably not under my control so that it gives a more positive aspect.

Sen. J. Lee: A couple of other areas of language that our committees have heard about in more recent years is people first language in which we talk about the individual with the disability and not the disabled person. I never viewed handicapped as a bad word. There was a gentleman who use to represent services for people with disabilities in the governor's office. He was quite fiery, but not using the word handicapped. The origin of that word which I didn't know until he told me was that someone who was disabled and was a beggar had a cap that was handy and took the cap off and held it out for people to drop coins in to so that they would have something to live on.

Veronica Zietz: Executive Director of the Arc testified in support of the bill. (See Testimony #1.)

Sen. Tim Mathern: From District 11 Fargo testified in support of the bill. I noticed there is discussion about amendments and I believe we are in a process of being as sensitive as possible to how we refer to each other and that involves language change, culture change in our community and I suspect that is what these amendments are for. To the degree that we create an environment that is as sensitive as possible I am supportive of these types of amendments. We did the best we could in the senate in the time frame we had available but I believe if there are better ideas that come forward we should be open to those ideas.

Rep. Damschen: I'm concerned that the term isn't a big improvement. If someone was to refer to you or I as an individual with an intellectual disability, would we consider it a compliment or an insult?

Sen. Mathern: Part of it is the context in which we refer to somebody using a descriptor. Part of it is also the way in which we do it. I think the point you are trying to make is accurate in that just one thing doesn't solve this issue. I would say that we do what we can. In this bill it is one step towards treating people with respect. Whether we can do more I suspect you are correct.

Roxane Romanick: Board President for Designer Genes of ND Inc. testified in support of the bill. (See Testimony #2.)

Tina Bay: Director of Developmental Disabilities Division of DHS testified in support of the bill. (See Testimony #3.)

Chairman Weisz: One of the suggested amendments was to change a medically fragile client which you know the definition we use to a client with medically fragile health, will that affect anything if we made that change from your perspective of the department?

Tina: I haven't see those amendments. I would like to actually look at those amendments.

Chairman Weisz: If you would then and get back to us on that. Those are the ARC recommendations.

Gerry Teevens: Assistant Director of Special Education for the Dept. of Public Instruction testified in support of the bill. (See Testimony #4.)

NO OPPOSITION

Chairman Weisz: Closed the hearing on SB 2142.

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

SB 2142
March 14, 2011
Job # 15396

☐ Conference Committee

Committee Clerk Signature Marilyn Kreinzle

Minutes: "No attached testimony."

Chairman Weisz: Open the meeting for work on SB 2142. He informed the committee that he had worked with the Department and there were some concerns and questions about the Medical Fragile, because that is a specific definition with CMS as far payments. Also they point out that there were probably more than 150 different places beyond the suggested changes that you would look at. Basically dealing with the intellectual disability now and leaving the others for now.
The amendment was passed to committee members to review which were suggested by ARC. They wanted to work with the mental Illness, medical fragile and emotional disturbance.
He asked what the committees wishes.

Rep Porter: Which portions of the bill would we amend out? Just section 18?

Chairman Weisz: The Department does not have a problem as is. They have a problem with the ARC amendment.

Rep Porter: The one piece does talk about medical fragile on section 18.

Chairman Weisz: Yes but it stated a medical fragile client. I forget where that is.

Rep Conklin: I move a do pass

Chairman Weisz: Before you do that we should review the additional suggested amendment by Roxanne.

Rep Paur: I would also like to suggest an amendment.

Chairman Weisz: After reviewing the amendment, he informed the committee that he also spoke with the Department on that proposed amendment and they said that it doesn't matter. The change would not really make a difference so we could change that the way they say but it is not needed.

Rep Paur: It looks like the definition of intellectual disability on line 19 on page 4, would become a circular reference. During testimony one of the complaints is that it was not defined.

Chairman Weisz: I am not sure why you think it is a circular reference. When talking to the Department the revision which says 2000 will be the definition use from now on because that was what was in place when the bill passed.

Rep Paur: You are right but in the bill I thought initially somewhere in here it said in the latest version.

Chairman Weisz: They wanted it changed to the latest version but that will not hold water anyway because it is defined in the 2000 version. The Legislative Body would have to make the change but it will always refer back to when the bill was passed anyway.

Rep Schmidt: On page 4 again back to line 19, I find it interesting that everywhere we cross out the word mental retardation yet we use it define it as intellectual disability.

Chairman Weisz: In the manual mental retardation is defined Intellectual disability.

Rep Conklin: Made a motion as DO PASS.

Rep Kilichowski: Seconded the motion.

Rep Damschen: I would like to clarify my position. I am going to oppose this, not because I don't understand that there is some negative connotation on the term on mental retardation but I also find that Intellectual disabilities has negative connotation also. I feel as time goes on the term will be miss used and we will be changing the term again. There will be a lot of changes in section 29. I think ARC is going to have to change their name to if we pass this bill. I do not want to belittle the people who want this change. I understand political correctness and am sensitive to terms but the negative connotation is put on by the people that use it, not the term itself.

Rep Paur: I have no opinion but visiting with Stacey Dahl. I don't know if this is her legal think or not but she believed intellectual disability was more offensive than mental retardation.

Chairman Weisz: To me it seems that the groups of people that work with it seem it is offensive. As far as state law it doesn't make a bit of difference.

Rep Paur: I agree with you I was just relaying a comment made to me.

Rep Holman: I see this as language changes in trades and that is what we are talking about here. We are changing this to have continuity of language with the Federal, State and probably training programs. It is more about what the trade wants to use.

Rep Damschen: I am just concern that if the diagnostic and statistical manual of Mental disorders takes out the term mental retardation out of their manual are we going to have to redo Subsection 3 of section 7?

Chairman Weisz: No. The reason being this bill freezes that in time so that definition is based on the text revision of 2000. That does not change what we do no matter what they do. Now if they change their definition we may want to change it but does not affect this law.

Do Pass on Engrossed SB 2142. Yeas 11 Nays 1 Absent 1 Rep Hofstad
Carrier Rep Conklin

Date: 3-14-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2142

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep Conklin Seconded By Rep. Kilichowski

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓		REP. CONKLIN	✓	
VICE-CHAIR PIETSCH	✓		REP. HOLMAN	✓	
REP. ANDERSON	✓		REP. KILICHOWSKI	✓	
REP. DAMSCHEN		✓			
REP. DEVLIN	✓				
REP. HOFSTAD	A				
REP. LOUSER	✓				
REP. PAUR	✓				
REP. PORTER	✓				
REP. SCHMIDT	✓				

Total (Yes) 11 No 1

Absent 1

Floor Assignment Rep. Conklin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2142, as engrossed: Human Services Committee (Rep. Weisz, Chairman) recommends **DO PASS** (11 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2142 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2142

P.O. Box 2081
Bismarck, ND 58502-2081
701.222.1854
veronica.zietz@thearcofbismarck.org
www.thearcofbismarck.org

#1

Testimony of Support Senate Bill 2142
Human Services Committee
January 17, 2011

Good morning Madam Chair and members of Human Services Committee. My name is Veronica Zietz (#99); I am the Executive Director at The Arc of Bismarck and I'm here today representing both The Arc of Bismarck and The Arc of Cass County. The Arc is an organization that provides education and advocacy to people with disabilities to foster empowerment and full inclusion in the community.

The Arc supports Senate Bill 2142, because it removes the words "mental retardation" and "mentally retarded" from state statute. This bill is definitely on the right track to providing people with disabilities in our state with the dignity they deserve. Removing archaic and hurtful language from state law will not only set an example, but positively empower self-advocates in our state. This bill is comprehensive and provides guidelines for future legislation, while not altering services or eligibility for individuals with a disability.

This bill has encouraging intentions; however, I would like to suggest that the committee consider an amendment that would be more in line with People First Language, which is a widely supported concept in the disability community. People First Language puts the person before the disability and describes what a person has, not what a person is. I would like to see the term "intellectually disabled" replaced with "individual with an intellectual disability" this would not only create uniformity within the bill but would be a far more appropriate terminology choice. This may seem like a small change to you, but it makes a big difference to individuals with disabilities, families and supporters. Additionally, there are multiple distasteful references to individuals with mental illness, emotional disturbances and physical disabilities in this bill, which the committee may want to address in order to provide the most comprehensive and appropriate bill to the citizens of North Dakota. If the committee is interested in adopting this proposed change, I would be pleased to identify areas of concern and recommend suitable changes.

I urge the committee to consider my request for an amendment and to support Senate Bill 2142. Thank you for your time and consideration.

#2

January 17, 2011 9:15am

TO: North Dakota State Legislature
ATTN: Senate Human Service Committee

FROM: Helen Bechold
615 First Ave. South
Grand Forks, North Dakota 58201

Contact: 701-780-9945

Dear Committee Members:

I am writing to ask you to please support SB2142.

I don't like the words mentally retarded, because for too long, those words made me feel like I was not a person. For over 30 years, I was locked up in Grafton (Dev. Center); my rights were taken away – we didn't have any rights!

Again, please support this bill, SB2142, put respectful language throughout our laws here in North Dakota.

Sincere thanks,

Helen Bechold

Helen Bechold

#3

January 17th, 2011

Attention: North Dakota Senate Human Svc. Committee
RE: Senate Bill 2142

Dear Senate Committee Members,

I was stuck in the Grafton state institution for 19 years. The only words I ever heard mostly to describe me, was *retarded.* I am a human being and why does anyone want to say that word anyway?

It's been 36 years since I have been out of Grafton, and it is about time to change that word to mean respect! I ask that you please support this senate bill 2142 and make that change.

Thank you for your time.

Bev Koller
810 4th Ave – Apt 102
Grand Forks, ND 58201
(701)775-9767
Beverly Koller

#4

Jan. 17th 2011

TO: North Dakota Senate Human Service Committee

Tracy Livingood
1823 N Washington
Grand Forks, ND 58203
701-746-7501

Please support Senate Bill 2142.

I don't like the words *mental retardation*, cause in the past it has been hurtful to my feelings. It makes me unhappy and angry.

Please use People First language.

I am a person that likes my job, being with friends, traveling. I want people too see me -- not my disability.

Thank you.

Tracy Livingood

#5

January 17th, 2011 – 9:15am

ATTN: North Dakota Legislative Assembly,
Senate Human Services Committee Hearing
Red River Room, Capitol
Bismarck, ND

RE: SB2142

John Birkeland
1027 10th St N, Apt 4
Fargo, ND 58102
(701) 739-0439

Dear Committee Members:

I am giving written testimony to ask for supporting this Senate Bill, 2142, to pass this measure to ensure a positive change in our state law's language.

As taking part in an international awareness campaign last year (March 3rd, 2010), called "Spread the Word to End the Word (the 'R' word)." Setting up tables at the major universities in the state – UND, NDSU and Dickinson State University – we were able to visit with young people across the state and have them sign and discuss the hurtful word 'retard.' They would take the pledge in not using it, sign the form, and then take a slip of paper with the word on it and shred it in the paper shredder.

I found talking with students and faculty that stopped by also found the terminology offensive, some didn't even realize that it was. Also, going around North Dakota via giving presentations, speaker's bureaus, trainings, performances and conferences, many people with varying abilities and disabilities also relayed the common feelings of hurt and anger over such terms *as mentally retarded*, *retard* and the like.

So, as asking for this support on this important measure, SB2142, on behalf of colleagues, students, constituents, self-advocates and professionals, support staff and such, I pass along these sentiments to the Committee in my testimony and experiences in our great state.

By changing the language, we can affect the way our citizens in our state think before they speak. The state's role would show by example, setting the tone in the language of our law by using a more appropriate and acceptable verbiage such as a person with an intellectual disability or intellectually disabled. Using People First Language is respectful. Words can be hurtful and have been; anything that we as residents of North Dakota can do in our power to improve sentiments in our language to reflect and ease tensions in our state and country can only give a positive end result.

Thanks for your attention!

John O. Birkeland

#6

PATHFINDER **PARENT CENTER**
1600 2nd Avenue SW
Minot ND 58701

Testimony on SB 2142
January 17th 2011
Submitted by Cathy Haarstad
On Behalf of the Pathfinder Parent Center
And
ND FamNet

Madam Chairmen

We support and encourage the use of people-first language in all laws, documents, policies, rules, manuals, resources and conversations that impact people with disabilities and their families.

We commend the ND Department of Public Service and the ND Department of Public Instruction for recommending legislative action to eliminate the use of the terms mental retardation and mentally retarded in current ND law.

This action is being conducted in alliance with recent national legislation that while not binding on states, suggests the need for updated terminology.

People with intellectual disabilities and their families have spoken. We regard the use of these terms as giving offense equal to the hatred and disrespect conveyed when using a racial or ethnic slur.

We deplore the fact that the term "retard" or "retarded" as well as terms such as moron, imbecile, and idiot which were once used to refer to people with disabilities living in institutional settings are still commonly heard on radio, and TV and are widely used throughout the United States, especially among young people on high school and college campuses.

We commend our state legislators for taking steps to remove this terminology from numerous ND laws and statutes and urge the passage of Senate Bill 2142 and House Bill 1073.

We note that within these two bills the term intellectually disabled is used. We respectfully suggest that this term be replaced with "individuals with intellectual disabilities" in keeping with people-first language. The term Intermediate Care Facility for ~~the mentally retarded~~ would be replaced with Intermediate Care Facility for individuals with intellectual disabilities." We also recommend that the term "suffers from" a mental illness which has been removed in one part of the document, be eliminated in every part of the document.

PATHFINDER **PARENT CENTER**
1600 2nd Avenue SW
Minot ND 58701

We were recently contacted by a parent from the Minot Airforce Base who asked us to include in this testimony her story about the damage and hurt conveyed by the language to be removed from this bill. Lisa Agreement is the parent of a young child with Down syndrome. Just last week she came face-to-face with a poster in her daughter's pre-school on base. The poster was an advertisement for recruiting a position at the school and read "an aide for the mentally retarded." She found herself trying to explain to her oldest child what that meant and took it upon herself to take down the poster and bring it to the office where her action was dismissed as something that is merely politically correct. In checking with the school she learned that they are awaiting action from the ND legislature before they will make any changes in terminology. Their statement was "how can we do this when that term is in everything."

The families of our military already make a significant sacrifice on behalf of all of us. This incident only added to the stress experienced by this family and other families who go about their lives raising young children with intellectual disabilities.

Thank you for considering their needs. While this may seem to be a housekeeping bill for this committee it only seems that way. For ND families it is a historic occasion. Thank you for making this possible.

11.8166.01000

Sixty-second
Legislative Assembly
of North Dakota

SENATE BILL NO. 2142

Introduced by

Senators J. Lee, Mathern, Berry

Representatives Delmore, Hawken, Weisz

A BILL for an Act to amend and reenact sections 15.1-02-16, 15.1-18-05, and 15.1-18-06, subsection 4 of section 15.1-32-01, subsection 4 of section 20.1-03-04, subsection 11 of section 25-03.1-02, subsections 3, 4, and 8 of section 25-03.3-01, section 25-03.3-07, subsection 2 of section 25-03.3-08, subsection 2 of section 25-03.3-09, sections 25-03.3-10, 25-03.3-11, and 25-03.3-12, subsection 1 of section 25-03.3-18, sections 25-03.3-19, 25-16.1-02, 25-18-01, and 25-18-15, subsection 4 of section 26.1-36-22, subsection 1 of section 27-20-34, subsection 2 of section 50-06-05.3, subsection 1 of section 50-24.1-07, subsection 9 of section 50-25.1-02, subsection 7 of section 57-38-01, and sections 57-63-01, 57-63-02, 57-63-03, and 57-63-13 of the North Dakota Century Code, relating to changing mental retardation to intellectual disability and mentally retarded to ~~person with an intellectual~~ intellectually disabled; and to provide for reconciliation by the ~~having an intellectual disability~~ legislative council of these terms in statutory provisions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-02-16 of the North Dakota Century Code is amended and reenacted as follows:

15.1-02-16. Superintendent of public instruction - Issuance of credentials to teachers and administrators.

The superintendent of public instruction may adopt rules governing the issuance of:

1. Credentials for teachers of driver's education;
2. Credentials for teachers of early childhood special education;
3. Credentials for elementary school principals;
4. Credentials for teachers of students who are emotionally disturbed;
5. Credentials for teachers of students who are gifted and talented;
6. Credentials for secondary school principals;
7. Credentials for library media;

8. Credentials for teachers of title I;
9. Credentials for teachers of students who ~~are mentally retarded~~have intellectual disabilities;
10. Credentials for teachers of students who are physically disabled;
11. Credentials for coordinators of programs for students with limited English proficiency;
12. Credentials for school counselors;
13. Credentials for special education directors;
14. Credentials for special education strategists;
15. Credentials for teachers of students who have specific learning disabilities;
16. Credentials for superintendents;
17. Credentials for teachers of students who have vision impairments;
18. Credentials for teachers of students who are deaf or hard of hearing; and
19. Certificate of completion for paraprofessionals.

SECTION 2. AMENDMENT. Section 15.1-18-05 of the North Dakota Century Code is amended and reenacted as follows:

15.1-18-05. Special education strategist credential.

In addition to any other credential, the superintendent of public instruction shall implement a special education strategist credential, effective August 1, 2001. Any individual who obtains a special education strategist credential and meets all other teacher licensure requirements imposed by statute may provide special education services in the areas of ~~mental retardation~~intellectual disabilities, emotional disturbance, and specific learning disabilities.

SECTION 3. AMENDMENT. Section 15.1-18-06 of the North Dakota Century Code is amended and reenacted as follows:

15.1-18-06. Provisional special education strategist credential.

Beginning August 1, 2001, upon application the superintendent of public instruction shall issue a provisional special education strategist credential to any individual who is licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and who holds a credential applicable to the areas of ~~mental retardation~~intellectual disabilities, emotional disturbance, or specific learning disabilities. The provisional credential must be made available to the individual for the lesser of three years or

the period of time required by the individual to complete the requirements for a special education strategist credential.

SECTION 4. AMENDMENT. Subsection 4 of section 15.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

4. a. "Student with a disability" means an individual who is at least three years of age but who has not reached the age of twenty-one before September first of the year in which the individual turns twenty-one and who requires special education and related services because of:
   (1) ~~Mental retardation~~An intellectual disability;
   (2) A hearing impairment, including deafness;
   (3) Deaf-blindness;
   (4) A speech or language impairment;
   (5) A visual impairment, including blindness;
   (6) An emotional disturbance;
   (7) An orthopedic impairment;
   (8) Autism;
   (9) A traumatic brain injury;
   (10) Other health impairment; or
   (11) A specific learning disability.

   b. "Student with a disability" includes a student age eighteen through twenty-one who is incarcerated in an adult correctional facility and who, in the last educational placement prior to incarceration, was identified as being a student with a disability and did not have an individualized education program or was identified as being a student with a disability and had an individualized education program.

SECTION 5. AMENDMENT. Subsection 4 of section 20.1-03-04 of the North Dakota Century Code is amended and reenacted as follows:

4. Developmental Center at Westwood park, Grafton patients, North Dakota Youth Correctional Center students, School for the Deaf Students, North Dakota Vision Services - ~~School for the blind students~~, State hospital patients, ~~community health and retardation service unit patients~~clients of regional human service centers under direct

therapeutic care, and residents of facilities licensed by the state department of health and the department of human services may fish without a resident fishing license. Patients of these institutions must be identified. The department shall issue authority to each institution.

SECTION 6. AMENDMENT. Subsection 11 of section 25-03.1-02 of the North Dakota Century Code is amended and reenacted as follows:

11. "Mentally ill person" means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. "Mentally ill person" does not include ~~a mentally retarded person~~an individual with an intellectual disability of significantly subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior, although a person who ~~is mentally retarded~~has an intellectual disability intellectually disabled may also ~~suffer from~~ have a mental illness. Chemical dependency does not per se constitute mental illness, although persons ~~suffering from~~ having that condition may also ~~be suffering from~~ have a mental illness.

SECTION 7. AMENDMENT. Subsections 3, 4, and 8 of section 25-03.3-01 of the North Dakota Century Code are amended and reenacted as follows:

3. ~~"Mental retardation"~~"Intellectual disability" means ~~mental retardation~~ as defined in the "Diagnostic and Statistical Manual of Mental Disorders", American psychiatric association, fourth edition ~~(1994)~~, text revision (2000).
4. "Qualified expert" means an individual who has an expertise in sexual offender evaluations and who is a psychiatrist or psychologist trained in a clinical program and licensed pursuant to this state's law or a psychologist approved for exemption by the North Dakota board of psychologist examiners. For purposes of evaluating an individual with ~~mental retardation~~an intellectual disability, the qualified expert must have specialized knowledge in sexual offender evaluations of individuals with ~~mental retardation~~an intellectual disability.
8. "Sexually dangerous individual" means an individual who is shown to have engaged in sexually predatory conduct and who has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or

dysfunction that makes that individual likely to engage in further acts of sexually predatory conduct which constitute a danger to the physical or mental health or safety of others. It is a rebuttable presumption that sexually predatory conduct creates a danger to the physical or mental health or safety of the victim of the conduct. For these purposes, ~~mental retardation~~intellectual disability is not a sexual disorder, personality disorder, or other mental disorder or dysfunction.

SECTION 8. AMENDMENT. Section 25-03.3-07 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-07. Appointment of guardian ad litem.

At any stage of a proceeding under this chapter, on application of any individual or on its own motion, the court may appoint a guardian ad litem for a minor or an individual with ~~mental retardation~~an intellectual disability who is a respondent or witness or otherwise involved in the proceeding, if the minor or an individual with ~~mental retardation~~an intellectual disability has no parent, guardian, or custodian appearing on behalf of the ~~minor's~~minor or the ~~mentally retarded individual's behalf~~individual with an intellectual disability or the interests of those persons conflict with those of the minor or an individual with ~~mental retardation~~an intellectual disability. The department of human services shall pay the expense of the guardian ad litem fee as established by the court.

SECTION 9. AMENDMENT. Subsection 2 of section 25-03.3-08 of the North Dakota Century Code is amended and reenacted as follows:

2. If the state's attorney knows or believes the respondent named in the petition is an individual with ~~mental retardation~~an intellectual disability, the state's attorney shall notify the court in the petition and shall advise the court of the name of the legal guardian of the respondent or, if none is known, the court may appoint a guardian ad litem for the respondent. Before service of the notice required in section 25-03.3-10, the court shall appoint an attorney for the respondent. An individual with ~~mental retardation~~an intellectual disability may be detained in a correctional facility before the probable cause hearing only when no other secure facility is accessible, and then only under close supervision.

SECTION 10. AMENDMENT. Subsection 2 of section 25-03.3-09 of the North Dakota Century Code is amended and reenacted as follows:

2. After consultation with counsel, the respondent may waive the right to counsel or the right to any hearing provided pursuant to this chapter by notifying the court in writing. The notification must clearly state the respondent's reasons for the waiver and the respondent's counsel shall separately certify that counsel has explained to the respondent the proceedings, the legal and factual issues, potential defenses, the burden of proof, and possible outcomes of the proceedings. No guardian, guardian ad litem, attorney, or other individual may waive the right to counsel on behalf of an individual with ~~mental retardation~~an intellectual disability.

SECTION 11. AMENDMENT. Section 25-03.3-10 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-10. Notice.

If a respondent is detained pursuant to section 25-03.3-08, the state's attorney shall provide the respondent, or the respondent's guardian, if appropriate, with a copy of the petition filed with the court. The state's attorney shall provide the respondent with written notice of the respondent's right to a preliminary hearing and a commitment hearing, if probable cause is found to exist; the right to counsel and that counsel will be appointed for the respondent, if the respondent is indigent; and the right to have an expert of the respondent's choosing conduct an evaluation and testify on the respondent's behalf or, if the respondent is indigent, that the court will appoint a qualified expert for the respondent. The notice must state the date, time, and place for the preliminary hearing. If notice is given to a respondent who the state's attorney knows or believes is an individual with ~~mental retardation~~an intellectual disability, the state's attorney also shall give notice to the respondent's attorney, guardian, and guardian ad litem, if any.

SECTION 12. AMENDMENT. Section 25-03.3-11 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-11. Preliminary hearing - Probable cause.

The respondent is entitled to a preliminary hearing within seventy-two hours of being taken into custody pursuant to an order of the court, excluding weekends and holidays, unless the respondent knowingly waives the preliminary hearing pursuant to section 25-03.3-09. The respondent has a right to be present, to testify, and to present and cross-examine witnesses at any preliminary hearing. The court may receive evidence that would otherwise be inadmissible

at a commitment hearing. If the court determines after a preliminary hearing that there is probable cause to believe the respondent is a sexually dangerous individual, the court shall order that the respondent be transferred to an appropriate treatment facility for an evaluation as to whether the respondent has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes the respondent likely to engage in further acts of sexually predatory conduct. If the court determines that probable cause does not exist to believe that the respondent is a sexually dangerous individual, the court shall dismiss the petition. If the respondent waives the preliminary hearing, then the respondent must be immediately transferred to an appropriate treatment facility for an evaluation as to whether the respondent has a congenital or acquired condition that is manifested by a sexual disorder, a personality disorder, or other mental disorder or dysfunction that makes the respondent likely to engage in further acts of sexually predatory conduct. An individual with ~~mental retardation~~an intellectual disability may be evaluated under this chapter at a facility only if that facility provides care and treatment to individuals with ~~mental retardation~~an intellectual disability.

SECTION 13. AMENDMENT. Section 25-03.3-12 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-12. Sexually dangerous individual - Evaluation.

The evaluation must be conducted by one or more experts chosen by the executive director. Whenever a respondent is subject to an evaluation pursuant to this chapter, the respondent may retain an expert to perform an evaluation or testify on the respondent's behalf. When the respondent is an adult with ~~mental retardation~~an intellectual disability and a guardian or guardian ad litem has not been appointed for the respondent, the court shall appoint an expert to perform an evaluation on behalf of the respondent. In the case of a respondent who is indigent, the court shall appoint a qualified expert to perform an examination or participate in the commitment proceeding on the respondent's behalf. The department of human services shall compensate any qualified expert appointed by the court on behalf of an indigent respondent in a reasonable amount based on time and expenses. An expert retained on behalf of the respondent must have reasonable access to the respondent for the purpose of the examination and to all relevant medical, psychological, and court records and reports.

SECTION 14. AMENDMENT. Subsection 1 of section 25-03.3-18 of the North Dakota Century Code is amended and reenacted as follows:

1. Annually, the executive director shall provide the committed individual with written notice that the individual has a right to petition the court for discharge. The notice must explain to the committed person when the committed person has a right to a hearing on the petition. The notice must inform the committed person of the rights this chapter affords the committed person at a discharge hearing. The executive director shall forward a copy of the notice to the committing court. If the committed individual is ~~mentally retarded~~an individual with an intellectual disability, the executive director shall also provide the written notice to the individual's attorney, guardian, and guardian ad litem, if any.

SECTION 15. AMENDMENT. Section 25-03.3-19 of the North Dakota Century Code is amended and reenacted as follows:

25-03.3-19. Appeal.

The respondent has the right to an appeal from an order of commitment or an order denying a petition for discharge. Upon entry of an appealable order, the court shall notify the respondent of the right to appeal and the right to counsel. The notice of appeal must be filed within thirty days after entry of the order. The appeal must be limited to a review of the procedures, findings, and conclusions of the committing court. Pending a decision on appeal, the order appealed from remains in effect. If the respondent is ~~a mentally retarded~~an individual with an intellectual disability, the court shall provide notice of the right to appeal to the respondent's attorney, the respondent's guardian, and guardian ad litem.

SECTION 16. AMENDMENT. Section 25-16.1-02 of the North Dakota Century Code is amended and reenacted as follows:

25-16.1-02. Conditions for appointment of receiver.

When the department has revoked the license of a treatment or care center, or when the operator of a center has requested, the department may file a petition with the district court to place the center under the control of a receiver if necessary to protect the health or safety of clients at the center. The court may grant the petition upon a finding that the health or safety of the clients at the center would be seriously threatened if a condition existing at the time the petition was filed is permitted to continue. Such a finding may be based upon evidence

concerning the physical plant, the program and services offered by the center, but not solely upon evidence that a center:

1. Has been denied a license to operate as a center, or has had a previously issued license revoked; or
2. Has been denied certification as an intermediate care facility for the ~~mentally retarded~~intellectually disabled or has lost or had revoked such certification.

SECTION 17. AMENDMENT. Section 25-18-01 of the North Dakota Century Code is amended and reenacted as follows:

25-18-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Department" means the department of human services.
2. "Treatment or care center" means an entity providing services to individuals with developmental disabilities and licensed by the department as an intermediate care facility for the ~~mentally retarded~~intellectually disabled as defined in section 1905(d) of the Social Security Act [42 U.S.C. § 1396d(d)]; group home; or a provider of day supports, supported living arrangement, extended services, or infant development services.

SECTION 18. AMENDMENT. Section 25-18-15 of the North Dakota Century Code is amended and reenacted as follows:

25-18-15. Payment for services to medically fragile children.

The department may consider the unique level of care, the additional cost required to provide services to medically fragile clients under twenty-one years of age, and the actual and reasonable cost of providing services to developmentally disabled individuals when reimbursing an intermediate care facility for ~~the mentally retarded~~intellectually disabled.

SECTION 19. AMENDMENT. Subsection 4 of section 26.1-36-22 of the North Dakota Century Code is amended and reenacted as follows:

4. A policy that provides that coverage for a dependent child of an employee or other member of the covered group terminates upon attainment of the limiting age for dependent children specified in the policy does not operate to terminate the coverage of a dependent child while the child is a full-time student and has not attained the age of twenty-six years or while the child is and continues to be both incapable of

self-sustaining employment by reason of ~~mental retardation~~intellectual disability or physical handicap and chiefly dependent upon the employee or member for support and maintenance, provided proof of incapacity and dependency is furnished to the insurer by the employee or member within thirty-one days of the child's attainment of limiting age and subsequently as may be required by the insurer but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

SECTION 20. AMENDMENT. Subsection 1 of section 27-20-34 of the North Dakota Century Code is amended and reenacted as follows:

1. After a petition has been filed alleging delinquency based on conduct which is designated a crime or public offense under the laws, including local ordinances or resolutions of this state, the court before hearing the petition on its merits shall transfer the offense for prosecution to the appropriate court having jurisdiction of the offense if:
   a. The child is over sixteen or more years of age and requests the transfer;
   b. The child was fourteen years of age or more at the time of the alleged conduct and the court determines that there is probable cause to believe the child committed the alleged delinquent act and the delinquent act involves the offense of murder or attempted murder; gross sexual imposition or the attempted gross sexual imposition of a victim by force or by threat of imminent death, serious bodily injury, or kidnapping; or the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance in violation of subdivision a or b of subsection 1 of section 19-03.1-23, except for the manufacture, delivery, or possession with intent to manufacture or deliver marijuana in an amount less than one pound [.45 kilogram]; or the gratuitous delivery of a controlled substance not a narcotic drug or methamphetamine which is a singular and isolated event involving an amount of controlled substance sufficient solely for a single personal use; or
   c. (1) The child was fourteen or more years of age at the time of the alleged conduct;
      (2) A hearing on whether the transfer should be made is held in conformity with sections 27-20-24, 27-20-26, and 27-20-27;

(3) Notice in writing of the time, place, and purpose of the hearing is given to the child and the child's parents, guardian, or other custodian at least three days before the hearing; and

(4) The court finds that there are reasonable grounds to believe that:

(a) The child committed the delinquent act alleged;

(b) The child is not amenable to treatment or rehabilitation as a juvenile through available programs;

(c) The child is not treatable in an institution for the ~~mentally retarded~~intellectually disabled or mentally ill; individuals with

(d) The interests of the community require that the child be placed under legal restraint or discipline; and

(e) If the child is fourteen or fifteen years old, the child committed a delinquent act involving the infliction or threat of serious bodily harm.

SECTION 21. AMENDMENT. Subsection 2 of section 50-06-05.3 of the North Dakota Century Code is amended and reenacted as follows:

2. Regional human service centers shall provide human services to all eligible individuals and families to help them achieve or maintain social, emotional, and economic self-sufficiency; prevent, reduce, or eliminate dependency; prevent or remedy the neglect, abuse, or exploitation of children and of adults unable to protect their own interests; aid in the preservation, rehabilitation, and reuniting of families; prevent or reduce inappropriate institutional care by providing for care while institutionalized or providing for community-based or other forms of less restrictive care; secure referral or admission for institutional care; provide outpatient diagnostic and treatment services; provide information concerning guardianship to people interested in becoming or who are guardians; and provide rehabilitation services for patients ~~suffering from~~with mental or emotional disorders, ~~mental retardation~~an intellectual disability, and other psychiatric conditions, particularly for those patients who have received prior treatment in an inpatient facility. Regional human service centers shall deliver services in the manner prescribed by the department.

SECTION 22. AMENDMENT. Subsection 1 of section 50-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

1. On the death of any recipient of medical assistance who was a resident of a nursing facility, intermediate care facility for the ~~mentally retarded~~intellectually disabled, or other medical institution and with respect to whom the department of human services determined that resident reasonably was not expected to be discharged from the medical institution and to return home, or who was fifty-five years of age or older when the recipient received the assistance, and on the death of the spouse of the deceased recipient, the total amount of medical assistance paid on behalf of the recipient following the determination that the recipient cannot reasonably be expected to be discharged from the medical institution, or the recipient's fifty-fifth birthday, as the case may be, must be allowed as a preferred claim against the decedent's estate after payment, in the following order, of:
   a. Funeral expenses not in excess of three thousand dollars;
   b. Expenses of the last illness, other than those incurred by medical assistance;
   c. Expenses of administering the estate, including attorney's fees approved by the court;
   d. Claims made under chapter 50-01;
   e. Claims made under chapter 50-24.5;
   f. Claims made under chapter 50-06.3 and on behalf of the state hospital; and
   g. Claims made under subsection 4.

SECTION 23. AMENDMENT. Subsection 9 of section 50-25.1-02 of the North Dakota Century Code is amended and reenacted as follows:

9. "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect when the institution responsible for the child's welfare is a residential child care facility, a treatment or care center for ~~mentally retarded~~intellectually disabled, a public or private residential educational facility, a maternity home, or any residential facility owned or managed by the state or a political subdivision of the state.

SECTION 24. AMENDMENT. Subsection 7 of section 57-38-01 of the North Dakota Century Code is amended and reenacted as follows:

7. "Mental disorder" means a substantial disorder of the person's emotional processes, thought, cognition, or memory. Mental disorder is distinguished from:

a. Conditions which are primarily those of drug abuse, alcoholism, or ~~mental retardation~~intellectual disability, unless in addition to one or more of these conditions, the person has a mental disorder.

b. The declining mental abilities that accompany impending death.

c. Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors which are abnormal and prohibited by statute, unless the behavior results from a mental disorder.

SECTION 25. AMENDMENT. Section 57-63-01 of the North Dakota Century Code is amended and reenacted as follows:

57-63-01. Definitions.

As used in this chapter:

1. "Business" has the meaning provided in section 31-08.1-01.
2. "Commissioner" means the state tax commissioner.
3. "Facility" includes the operating entity of each intermediate care facility for ~~the mentally retarded~~intellectually ~~disabled~~ located in this state.
4. "Intermediate care facility for the ~~mentally retarded~~intellectually disabled" means a treatment or care center licensed under chapter 25-16 that provides services eligible for coverage as medical assistance under 42 U.S.C. 1396a(a)(31), and also means the developmental center at westwood park, Grafton.
5. "Licensed bed" means a bed licensed under chapter 25-16 or approved by the secretary of health and human services pursuant to 42 U.S.C. 1396i.
6. "Quarter" means one of four calendar quarters beginning January first, April first, July first, or October first.

SECTION 26. AMENDMENT. Section 57-63-02 of the North Dakota Century Code is amended and reenacted as follows:

57-63-02. Imposition of assessment.

An assessment must be imposed on each intermediate care facility for ~~the mentally retarded~~intellectually ~~disabled~~ licensed in this state. No waiver otherwise available under this code is applicable to this assessment.

SECTION 27. AMENDMENT. Section 57-63-03 of the North Dakota Century Code is amended and reenacted as follows:

57-63-03. Basis of assessment.

Every year beginning July first, each intermediate care facility for the ~~mentally retarded~~intellectually disabled must be assessed a quarterly rate per licensed bed as of the first day of each quarter. The quarterly rate may not exceed a rate calculated by the department of human services as an annual aggregate of gross revenues as of December thirty-first of the preceding year for all intermediate care facilities for the ~~mentally retarded~~intellectually disabled, multiplied by one and one-half percent, and divided by licensed beds as of December thirty-first of the preceding year.

SECTION 28. AMENDMENT. Section 57-63-13 of the North Dakota Century Code is amended and reenacted as follows:

57-63-13. Provider assessment fund.

There is a special fund in the state treasury known as the provider assessment fund. The fund includes all revenue received from intermediate care facilities for the ~~mentally retarded~~intellectually disabled for remittance to the fund under this chapter. All moneys designated for the fund from whatever source derived must be deposited with the state treasurer in the provider assessment fund.

SECTION 29. LEGISLATIVE COUNCIL TO CHANGE TERMINOLOGY. The legislative council shall replace "mentally retarded" or "mental retardation" or any derivatives of those terms, which when used in context indicate an intention to refer to those terms, wherever they appear in legislation enacted by the sixty-second legislative assembly of North Dakota and to insert in lieu of each deletion "intellectually disabled" or "intellectual disability".

Sixty-second
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1073

Introduced by

Representatives Mueller, D. Johnson, Rust, Wall

Senators Heckaman, G. Lee

A BILL for an Act to amend and reenact sections 15.1-32-01, 15.1-32-12, 15.1-32-13, and 15.1-32-15 of the North Dakota Century Code, relating to special education.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15.1-32-01 of the North Dakota Century Code is amended and reenacted as follows:

15.1-32-01. Definitions.

As used in this chapter:

1. "Related services" means transportation and developmental and corrective or supportive services required to assist a student with disabilities to benefit from special education.
2. "Special education" means instruction designed to meet the needs of a student with disabilities, transportation, and corrective and supporting services required to assist a student with disabilities in taking advantage of, or responding to, educational programs and opportunities.
3. "Student who is gifted" means an individual who is identified by qualified professionals as being capable of high performance and who needs educational programs and services beyond those normally provided in a regular education program.
4. a. "Student with a disability" means an individual who is at least three years of age but who has not reached the age of twenty-one before September first of the year in which the individual turns twenty-one and who requires special education and related services because of:
   (1) ~~Mental retardation~~An intellectual disability;
   (2) A hearing impairment, including deafness;
   (3) Deaf-blindness;

(4) A speech or language impairment;

(5) A visual impairment, including blindness;

(6) An emotional disturbance;

(7) An orthopedic impairment;

(8) Autism;

(9) A traumatic brain injury;

(10) Other health impairment; or

(11) A specific learning disability.

b. "Student with a disability" includes a student age eighteen through twenty-one who is incarcerated in an adult correctional facility and who, in the last educational placement prior to incarceration, was identified as being a student with a disability and did not have an individualized education program or was identified as being a student with a disability and had an individualized education program.

SECTION 2. AMENDMENT. Section 15.1-32-12 of the North Dakota Century Code is amended and reenacted as follows:

15.1-32-12. Multidisciplinary teams - Individualized education programs - Services plans.

If a school district has evidence of a student's disability, the school district shall convene a multidisciplinary team consisting of educational professionals~~, medical professionals,~~ and the student's parent to share assessment information related to the student's suspected disability. If necessary, the team shall develop an individualized education program or services plan and make recommendations for the delivery of special education and related services to the student.

SECTION 3. AMENDMENT. Section 15.1-32-13 of the North Dakota Century Code is amended and reenacted as follows:

15.1-32-13. Related services - Insurance options - School district responsibility.

Each school district shall ~~require that all family insurance options be exhausted in paying the costs of determining a student's medically related disability~~obtain parental consent before accessing public benefits or insurance to pay for the cost of determining a student's medically related disability and in paying for the provision of related services to the student, provided

there is no financial loss to the student or the student's parent. The school district is responsible for all costs not covered by the family's insurance.

SECTION 4. AMENDMENT. Section 15.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

15.1-32-15. Student with disabilities - Attendance at private institution or out-of-state public school.

1. If in the opinion of an individualized education program team or an education services team a student is unable to attend a public school in the student's school district of residence because of a ~~physical disability, a mental disability, or a learning~~ disability, and if no public school in the state will accept the student and provide the necessary services, the student's school district of residence shall contract with:
   a. A private, accredited, nonsectarian, nonprofit institution that is located within or outside of this state and which has the proper facilities for the education of the student; or
   b. A public school located outside of this state that has proper facilities for the education of the student.
2. The superintendent of public instruction shall approve in advance the terms of the contract and the services to be provided by the admitting institution or school.
3. The contract must provide that the student's school district of residence is liable for the cost of educating the student.
4. A student who receives services under this section is deemed to be enrolled in the student's school district of residence for purposes of determining average daily membership.

#7

Senate Human Services Committee
January 17, 2011
SB 2142

Good morning, Chairman Lee and members of the Senate Human Services Committee.

My name is Nancy Miller and I am the Executive Director of the North Dakota Chapter of the National Association of Social Workers (NASW). NASW is the largest membership organization of professional social workers in the world, with 145,000 members. **In our effort to advocate for the elimination of stigma associated with mental illness, we offer support of SB2142, relating to changing the terms 'mental retardation and mentally retarded' to 'intellectual disability and intellectually disabled', in a various statutory provisions.**

Although originally a clinical term and introduced with good intentions, the term "mental retardation" and its pejorative form, "retard" have been used widely in today's society to degrade and insult people with intellectual disabilities. Eliminating the out-dated terms sends a strong message that language is important and that no form of the 'R-word' should be used to refer to anyone.

The proposed change in terminology is a proactive step that is indicative of changes that have already been made, or are in the process of being implemented, on a variety of fronts:

- The Centers for Disease Control and the World Health Organization have already made the change to this language.
- On October 5, 2010, President Obama signed "Rosa's Law (bill S.2781) into federal law. Rosa's Law makes the same language changes to various federal laws that primarily relate to education, health and labor, without expanding or diminishing services, rights, or educational opportunities.
- DSM-V (the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition), which will be released in 2013, is looking at changing to the new terminology as well. The DSM provides a common language and standard criteria for the classification of mental disorders, and it is used in the United States and in varying degrees around the world.

All people deserve to be treated with dignity and respect - not labeled or defined by virtue of their disability. By making the language changes associated with this bill, you will be helping to eliminate the stigma associated with mental illness, and help improve the quality of life for those with intellectual disabilities.

Again, we support SB2142, and we thank you for the opportunity to be here today.

#8

Senate Human Services Committee
SB 2142
Testimony prepared for 1-17-11

Madam Chair Lee and Members of the Senate Human Services Committee:

My name is Roxane Romanick and I am the Board President for Designer Genes of North Dakota, Inc. Designer Genes of ND, Inc. is a state incorporation that serves to supports individuals with Down syndrome and their families. Today I am representing our network that consists of 250 members across the state of North Dakota. We are here today in support of SB 2142 and the spirit of the effort. We commend the Department of Human Services, in collaboration with other state partners, as well as the efforts of the Arc in their efforts to bring this bill forward.

As many of you may know, Rosa's Law was signed into law on October 6, 2010. The name for the law came from the inspiration of Rosa Marcellino, a nine year old girl with Down syndrome, who worked with her family to change state statute terminology. We are encouraged that today in North Dakota, similar bills are appearing to work to bring our own state statue into line with People First Language.

Because our organization helps to support individuals who have as part of their chromosomal makeup a tendency to face the challenges of intellectual disability, we see progressive language changes as critical to helping others in our community engage individuals with Down syndrome and other disabilities with respect and dignity. We hope that the language change will help the community think about the needs for accommodations rather than a qualifier or a descriptive term. If you think about it for a second, if I say that someone has a physical disability, perhaps one of your thoughts is whether or not that person uses a wheelchair or crutches for supporting mobility. But if I say to you that [redacted]eone is mentally retarded or has mental retardation, you probably draw a picture in your mind of what that person [redacted]s like and usually it's probably someone with Down syndrome. Would it be possible that we could get to a time where we would think about an accommodation like a palm device or visual schedules when we discuss a person with an intellectual disability?

You may think that this bill is only about removing language that stimulates hurtful slang and that it is housekeeping in nature, but I see it as making a difference in how we structure services. Oh, I know this is not about changing eligibility or service delivery – that's for another day, but as I stated earlier the shift helps us realize that challenges in the area of cognitive development are individual by nature and should be treated as such. Today as we speak, my daughter, Elizabeth, who has Down syndrome, is part of a public school regular education classroom in ND. She is not "pegged" into a specific type of classroom because she was determined to have a certain level of mental retardation, but instead her teachers have carefully looked at the specific learning challenges that she has and work to find modifications and accommodations so that she can learn alongside her peers. This is a very different philosophy than just labeling someone with an all-inclusive and descriptive diagnosis and sticking them in a certain type of curriculum.

We ask that you carefully scrutinize the bill that is in front of you for further occurrences of language that does not promote respect and dignity, such as terms like "intellectually disabled" and "suffers from".

Thank you for your time.

Roxane Romanick
[redacted]signer Genes of ND, Inc.
[redacted] Box 515
romanick@bis.midco.net
701-258-7421

DESIGNER GENES

A·DOWN·SYNDROME·SUPPORT·NETWORK

WWW.DESIGNERGENESND.COM

Designer Genes hopes that through continued awareness efforts we can help all to recognize the potential of people of all abilities, especially those with Down syndrome.

DOWN SYNDROME isn't a disease. It is the most commonly occuring chromosonal abnormality.

It is a **TRAIT.** It is not a condition or affliction. It is something an individual has like brown hair, a sparkling smile and a great personality.

People with DS **LEAD** fulfilling lives and contribute to their communities.

#9

TESTIMONY – PROTECTION AND ADVOCACY PROJECT
SENATE BILL 2142
SENATE HUMAN SERVICES COMMITTEE
January 17, 2011

Chairman Lee and Members of the Committee, my name is Corinne Hofmann. I am Director of Policy and Operations for the Protection and Advocacy Project [P&A]. P&A serves individuals who have disabilities, including those with intellectual disabilities. P&A supports passage of Senate Bill 2142.

At the turn of the 20th century, people with intellectual disabilities were institutionalized and isolated. They were labeled "feeble-minded" in federal statutes. This was thrown out in the 1960s in favor of the term "mentally retarded". Unfortunately, the word "retarded" has become slang to call someone "stupid". It is also used in a negative way to criticize ideas or behavior with phrases such as, "That's so retarded".

In 1990, Congress passed the American with Disabilities Act that prohibited many forms of discrimination against people with disabilities. Greater understanding of disabilities, and the effect of disabilities on people that have them, began to grow. Change has been slow, however, in the use of stigmatizing language within our culture.

In 2006, the American Association on Mental Retardation voted to change its name to the American Association on Intellectual and Developmental Disabilities. In 2008, the Associated Press struck "mentally retarded" from its style book.

In 2010, federal legislation known as "Rosa's Law" was passed, which replaced the term "mental retardation" in several federal laws with "intellectual disability". Other states have moved to make similar changes.

Language matters. Words have power.

For that reason, we respectfully ask the committee for a "do pass" recommendation on SB 2142.

#10

Testimony
Senate Bill 2142– Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
January 17, 2011

Chairman Lee, members of the Senate Human Services Committee, I am Tina Bay, Director of the Developmental Disabilities Division within the Department of Human Services. I am here today on behalf of the Department to provide background information and to support Senate Bill 2142. This bill will provide an act to amend and reenact sections of the North Dakota Century Code relating to changing mental retardation to intellectual disability and mentally retarded to intellectually disabled; and to provide for reconciliation by the legislative council of these terms in statutory provisions.

On October 5, 2010 the President signed into law "Rosa's Law" which changes references in many Federal statutes that currently refer to "mental retardation" to refer, instead to "intellectual disability".

The Department has received written approval from the Centers for Medicare and Medicaid Services (CMS) to make the change from Intermediate Care Facility for the Mentally Retarded (ICF/MR) to Intermediate Care Facility for the Intellectually Disabled (ICF/ID).

This concludes my testimony. I would be happy to answer any questions you may have.

#11

TESTIMONY ON SB 2142
SENATE HUMAN SERVICES COMMITTEE
January 17, 2011
Department of Public Instruction

Madam Chairman and members of the committee:

My name is Gerry Teevens and I am the Assistant Director of Special Education for the Department of Public Instruction. I am here to speak in support of SB 2142.

Amending the terminology of the disability category of 'mental retardation' to 'intellectual disability' is consistent with federal legislation commonly known as Rosa's law, signed into law on October 5, 2010 by President Obama. This bill changes references in many Federal statutes that currently refer to "mental retardation" to refer, instead, to "intellectual disability". This bill will substitute outdated, stigmatized terms in federal health, education, and labor laws.

The Department has had concerns for several years with the terminology of mental retardation. There have been inconsistent practices in the field. The Department has been consulting with the Department of Human Services about this bill.

This terminology change would not impact service, eligibility, or quality of special education services, but would promote more respectful terminology in referring to individuals with cognitive delays.

As we are all aware, people with intellectual disabilities and their families have expressed concerns about the use of the term "mental retardation" in legislation, policy and practices used throughout the United States.

During the 2009-10 school year, the ND *I.D.E.A. State Advisory Committee* in its advisory capacity to the ND Department of Public Instruction, recommended that the Department of Public Instruction encourage the U.S. Department of Education to replace the term "mental retardation" with "intellectual disability," and to work with Congress to modify Federal education statutes, policies, regulations and guidelines regarding this language.

Discussion among parents and professionals on the committee focused on these key challenges associated with the use of this term.

- Testimony from families about the negative and hurtful nature of the term "mental retardation", which is strongly associated with the slur "retard," that is now commonly used in many U.S. communities, especially among young people in school settings.
- The inaccuracy of the term "mental retardation," as a scientific descriptor; which may imply that if mental abilities are "retarded," people are somehow unable to learn.
- The reluctance of many educators to identify a student's primary disability as "mental retardation;" knowing that it will be rejected by their parents and thus making it difficult to secure needed special education services for the student.
- An awareness of the need to listen to the disability community; as recipients of special education services and graduates who have received a free and appropriate public education, they have expressed their preference to be considered as people first; and to be treated with dignity and respect.
- A sense of humility in understanding how words both shape perception and influence thoughts and behaviors that limit individual growth and place in society.

A year ago, a letter from the North Dakota Department of Public Instruction with those recommendations to replace the term "mental retardation" with "intellectual disability," was sent to the Assistant Secretary for Special Education and Rehabilitative Services. The letter was an expression of support for the federal legislation later signed into law by President Obama as Senate Bill 2781.

Madam Chairman that concludes my testimony. I would be happy to answer any questions the committee may have.

#12

Jan. 17, 2011

Attention: North Dakota Senate, Human Service Committee Members

I support SB 2142.

I think it is wrong to have those words, mental retardation, in our laws. I was put in Grafton state institution when I was only 14 years old ... and I did not like it. They treated me mean, when I didn't "behave."

Now, please change this language so it is better for us.

Thank you for supporting the People First language, It is about time we make the law to not say those words.

Thank you very much.

Traves Einarson
810 4th Avenue
Apartment #102
Grand Forks, North Dakota 58201 701-775-9767

Traves Einarson

#13

Testimony
Senate Bill 2142 – Department of Human Services
Senate Human Services
Senator Lee, Chairman
January 17, 2011

Chairman Lee, members of the Senate Human Services Committee, I am JoAnne Hoesel, Director of the Division Mental Health & Substance Abuse Services, for the Department of Human Services. I am here today in support of Senate Bill 2142.

The Department worked with a variety of stakeholders and other state agencies whose regulations would be affected by the passage of this bill in drafting its language. The group agreed that this language change is not intended to affect services, eligibility, or quality of care but rather, it is an effort to show respect to the persons served.

The change from mental retardation to intellectual disability is less offensive and is line with the current practice of providing supports tailored to individuals to enhance their functioning.

The Department was pleased to be part of the planning and supports this positive legislation. We believe the passage of the bill before you today is the right thing to do.

I will answer any questions you have.

#14

Prepared by Veronica Zietz, The Arc of Bismarck for Senate Human Services Committee

January 17, 2011

PROPOSED AMENDMENT TO SENATE BILL NO. 2142

Page 1, line 10, replace "intellectually disabled" with "individual with an intellectual disability"

Page 1, line 21, overstrike "who are emotionally disturbed" and insert immediately thereafter "with an emotional disturbance"

Page 2, line 2, overstrike "who" and replace "have" with "with"

Page 2, line 4, overstrike "who are physically disabled" and insert immediately thereafter "with a physical disability"

Page 2, line 9, overstrike "who have" and insert immediately thereafter "with"

Page 2, line 11, overstrike "who have" and insert immediately thereafter "with"

Page 2, line 12, overstrike "who are deaf or hard of hearing" and insert immediately thereafter "with deafness or with a hearing impairment"

Page 4, line 7, overstrike "Mentally ill person" and insert immediately thereafter "A person with a mental illness"

Page 4, line 9, overstrike "Mentally ill person" and insert immediately thereafter "A person with a mental illness"

Page 4, line 13, overstrike "who is", replace "intellectually disabled" with "with an intellectual disability" and overstrike "suffer from" and insert immediately thereafter "be an individual with"

Page 4, line 15, overstrike the first "suffering from" and insert immediately thereafter "with" and overstrike the second "suffering from" and insert immediately thereafter "an individual with"

Page 9, line 5, overstrike "the"

Page 9, line 6, replace "intellectually disabled" with "individuals with an intellectual disability"

Page 9, line 14, overstrike "the" and replace "intellectually disabled" with "individuals with an intellectual disability"

Page 9, line 22, overstrike "medically fragile clients" and insert immediately thereafter "clients with medically fragile health"

Page 9, line 23, overstrike "developmentally disabled" and after "individuals" insert "with a developmental disability"

Page 9, line 24, overstrike "the" and replace "intellectually disabled" with "individuals with an intellectual disability"

Page 10, line 2, overstrike "handicap" and insert immediately thereafter "disability"

Page 11, line 8, overstrike "the"

Page 11, line 9, replace "intellectually disabled" with "individuals with an intellectual disability" and overstrike "mentally ill" and insert immediately thereafter "mental illness"

Page 12, line 2, overstrike "the" and replace "intellectually disabled" with "individuals with an intellectual disability"

Page 12, line 24, remove "intellectually"

Page 12, line 25, replace "disabled" with "individuals with an intellectual disability"

Page 13, line 15, overstrike "the"

Page 13, line 16, replace "intellectually disabled" with "individuals with an intellectual disability"

Page 13, line 17, overstrike "the"

Page 13, line 17, replace "intellectually disabled" with "individuals with an intellectual disability"

Page 13, line 28, overstrike "the"

Page 13, line 29, replace "intellectually disabled" with "individuals with an intellectual disability"

Page 14, line 4, overstrike "the"

Page 14, line 5, replace "intellectually disabled" with "individuals with an intellectual disability"

Page 14, line 8, overstrike "the" and replace "intellectually disabled" with "individuals with an intellectual disability"

Page 14, line 15, overstrike "the"

Page 14, line 16, replace "intellectually disabled" with "individuals with an intellectual disability"

Page 14, line 23, replace "intellectually disabled" with "individual with an intellectual disability"

Renumber accordingly

#15

From: Bob Puyear [mailto:44digits@bis.midco.net]
Sent: Monday, January 17, 2011 11:38 AM
To: Lee, Judy E.; Uglem, Gerald P.; Dever, Dick D.; Berry, Spencer D.; Mathern, Tim
Subject: SENATE BILL NO. 2142

Chairwoman Sen. Lee and Committee Members:

I am requesting that The Human Services Committee modify the language in Senate Bill Number 2142 to people first language. I am suggesting that the following changes be made to this bill under consideration.

Some changes are:

- page 3 line 28... change... Grafton patients to... people who live in Grafton...
- page 3 line 30... change... state hospital patients,... to... people who live in the state hospital, ...
- page 4 line 3... change... Patients of these institutions... say... People living in these institutions;
- page 11 line 23... change... provide outpatient diagnostic... to... provide out of hospital diagnostic...
- page 11 line 25... change... services for patients... to... services for people...
- page 11 line 27... change... for those patients who... to... for those people who...
- page 11 line 28... change... an inpatient facility... to... a medical facility...

Thank you for considering this request, Bob Puyear

+-

#16

From: Linda Wurtz [mailto:lkjw@bis.midco.net]
Sent: Sunday, January 16, 2011 3:44 PM
To: Lee, Judy E.
Cc: 'Veronica Zietz'
Subject: SB 2142

I am writing in support of SB 2142, to implement the terms "intellectual disability" and "intellectually disabled" in North Dakota statute.

[redacted] is an issue of dignity for people who have as disability as well as a more dignified way for the state to express itself. [redacted]ough I would prefer to see "individuals with an intellectual disability" over "intellectually disabled," the bill as written is a significant step toward improving the verbiage in North Dakota statute.

I urge your do-pass recommendation for SB 2142

Thank you,
Linda Wurtz
423 West Apollo Avenue
Bismarck, ND 58503

701-426-3688

From: Paula Burckhard [mailto:pkburck@srt.com]
Sent: Friday, January 14, 2011 5:09 PM
To: Lee, Judy E.
Subject: SB 2142

Dear Senator Lee,

My daughter Elizabeth is a 16 year old junior at Our Redeemer's Christian School in Minot. She wrote the attached [redacted]ter in support of SB 2142. We have four children....the youngest two have Down syndrome. For this reason, Elizabeth [redacted] motivated to write this letter. I hope you enjoy reading it and will consider voting to pass this Bill.....

Sincerely,

Paula Burckhard
Minot, ND

SB 2142

January 14, 2011

Dear Senator Lee:

Last year, a family from Maryland named the Marcellinos began petitioning their neighborhood for signatures over an idea to change terms in local and state legislation. In almost all legal documents, people with developmental disabilities are referred to as "mentally retarded." The Marcellinos, who have a nine-year-old daughter with Down syndrome, were lobbying to have the wording changed to "person with an intellectual disability." The bill went nationwide when Senator Barbara Mikulski of Maryland presented it to the federal government. The bill became a law on October 5, 2011, when President Obama signed it.

Federal legislation has since changed extensively in relation to this issue, but North Dakota legislation has remained much the same. Rosa's Law, named after the Marcellinos' little girl, has taken effect in some documents, but not within the education system. My sister has Down syndrome, and she has to take some additional classes to help with the development of things such as speech and fine motor skills. However, these classes take place in the "M.R. Room," or "Mental Retardation Room." Of course, when school systems were adjusted to the needs of children with developmental disabilities, they did not name that room intending it to be derogatory, but in recent years, "retarded" has come to be an unfortunately common insult, especially among children and teenagers. My sister could be going through school with flying colors, but if other classmates see her going into the "M.R. Room," they begin to associate the word "retarded," and all of its accompanying negative connotations, with my sister and any other child in that room. How could they be expected to succeed like any other child if they are being limited by their peers, or sometimes even other teachers, in such a way?

My proposition is that Rosa's Law should take full effect in North Dakota legislation and within the school systems. The change does not cost any money, and it will bless the lives of children with developmental disabilities, as well as their families and friends, many times over. Altering those few words will help to promote acceptance and tolerance among classmates towards others who may be a little different from them. The rest of the nation has accepted this change; it's about time North Dakota did, too.

Sincerely,

Elizabeth Burckhard,
Our Redeemer's Christian School, High School Junior
1103 15th Court SE
Minot, North Dakota 58701

P.O. Box 2081
Bismarck, ND 58502-2081
701.222.1854
veronica.zietz@thearcofbismarck.org
www.thearcofbismarck.org

#1
2142

Testimony of Support Senate Bill 2142
House Human Services Committee
March 8, 2011

Good morning Chairman Weisz and members of the Human Services Committee. My name is Veronica Zietz (#99); I am the Executive Director at The Arc of Bismarck and I'm here today representing both The Arc of Bismarck and The Arc of Cass County. The Arc is an organization that provides education and advocacy to people with disabilities to promote empowerment and full inclusion in the community.

The Arc supports Senate Bill 2142, because it removes the words "mental retardation" and "mentally retarded" from state statute. This bill is definitely on the right track to providing people with disabilities in our state with the dignity they deserve. Removing archaic and hurtful language from state law will not only set a positive example, but will also empower self-advocates in North Dakota to live up to their full potential. Enacting this bill will foster acceptance in our society for the largest minority population in existence, by striking outdated language North Dakota will put an end to the usage of terminology that perpetuates stereotypes and stigma. Additionally, this bill provides guidelines for future legislation, which will encourage growth and eliminate barriers for people with disabilities. Senate Bill 2142 is strictly a terminology bill and is quite comprehensive; however, it **will not alter services or eligibility** for individuals with a disability.

This bill has encouraging intentions; however, I would like to point out that there are some inconsistencies in the language of this bill. I would like to provide an amendment that would be more in line with People First Language, which is a widely supported concept in the disability community. People First Language puts the person before the disability and describes what a person has, not what a person is. I have found two inconsistencies in the bill regarding the term "intellectually disabled" and I would like to see that phrase replaced with the term "individual with an intellectual disability". This was a change that was supported by the Senate committee and largely adopted; this can be seen in the fact that their amendment adopted this change in 12 of 14 circumstances. Making these suggested changes would not only create uniformity within the bill but would be a far more appropriate language choice. This may seem like a small change to you, but it makes a big difference to individuals with disabilities, families and supporters. Additionally, this bill has multiple distasteful references to individuals with mental illness, emotional disturbances and physical disabilities, which the committee may want to address in order to provide the most comprehensive and appropriate bill to the citizens of North Dakota. I have attached a draft amendment for your review.

I urge the committee to consider my request for an amendment and to support Senate Bill 2142. Thank you for your time and consideration.

House Human Services Committee

March 8, 2011

PROPOSED AMENDMENT TO ENGROSSED SENATE BILL NO. 2142

Page 1, line 21, overstrike "who are emotionally disturbed" and insert immediately thereafter "with an emotional disturbance"

Page 2, line 2, overstrike "who"

Page 2, line 2, replace "have" with "with"

Page 2, line 4, overstrike "who are physically disabled" and insert immediately thereafter "with a physical disability"

Page 2, line 9, overstrike "who have" and insert immediately thereafter "with"

Page 2, line 11, overstrike "who have" and insert immediately thereafter "with"

Page 2, line 12, overstrike "who are deaf or hard of hearing" and insert immediately thereafter "with deafness or with a hearing impairment"

Page 4, line 7, overstrike "Mentally ill person" and insert immediately thereafter "A person with a mental illness"

Page 4, line 9, overstrike "Mentally ill person" and insert immediately thereafter "A person with a mental illness"

Page 4, line 13, overstrike "who is"

Page 4, line 13, replace "intellectually disabled" with "with an intellectual disability"

Page 4, line 13, overstrike "suffer from" and insert immediately thereafter "be an individual with"

Page 4, line 15, overstrike the first "suffering from" and insert immediately thereafter "with"

Page 4, line 15, overstrike the second "suffering from" and insert immediately thereafter "an individual with"

Page 9, line 23, overstrike "medically fragile clients" and insert immediately thereafter "clients with medically fragile health"

Page 9, line 24, overstrike "developmentally disabled"

Page 9, line 24, after "individuals" insert "with a developmental disability"

Page 11, line 11, replace "who are intellectually disabled" with "individuals with intellectual disabilities"

Page 11, line 11, overstrike "who are mentally ill" and insert immediately thereafter "individuals with mental illness"

Renumber accordingly

DESIGNER GENES
A·DOWN·SYNDROME·SUPPORT·NETWORK

2142

House Human Services Committee
SB 2142
Testimony prepared for Hearing on 3-8-11

Chairman Weisz and the Members of the House Human Services Committee:

My name is Roxane Romanick and I am the Board President for Designer Genes of North Dakota, Inc. Designer Genes is a state incorporation that serves to support individuals with Down syndrome and their families. Today I am representing our network that consists of 250 members across the state of North Dakota. We are here today in support of SB 2142. We commend the Department of Human Services, in collaboration with other state partners, as well as the efforts of the Arc in their efforts to bring this bill forward.

As many of you may know, Rosa's Law was signed into federal statute on October 6, 2010. The name for the law came from the inspiration of Rosa Marcellino, a nine year old girl with Down syndrome, who worked with her family to change Massachusetts' state statue terminology. We are encouraged that today in North Dakota; similar bills are appearing to bring our own state statute into line with People First Language.

Because our organization helps to support individuals who have as part of their diagnostic profile a tendency to face the challenges of intellectual disability, we see progressive language changes as critical to helping others in our community engage individuals with Down syndrome and other disabilities with respect and dignity. You may think that this bill is only about removing language that stimulates hurtful slang and that it is housekeeping in nature, but I see it as making a difference in how we view persons with a disability and their support needs. Today as we speak, my daughter, Elizabeth, who has Down syndrome, is part of a public school regular education classroom in ND. She is not "pegged" into a specific type of classroom just because she was determined to have a certain

level of mental retardation. Instead her teachers carefully look at her specific learning challenges and work to find modifications and accommodations so that she can learn alongside her person. This is a very different philosophy than just labeling someone with an all-inclusive and descriptive diagnosis and then sticking them into a certain type of setting or curriculum based on that diagnosis.

We request that you consider one additional amendment to this bill. This amendment would pertain to **Section 7. Amendment, Subsection 3.**

As amended in the Senate, this Section now reads: "Intellectual disability" means mental retardation as defined in the "Diagnostic and Statistical Manual of Mental Disorders", American psychiatric association, fourth edition, text edition (2000)." We would like to propose a further amendment to Subsection 3:

On line 19, following the word "the", insert, **most recent edition of the** and continue with "Diagnostic ...

On line 21, following the word association, insert a period. And delete everything in Subsection 3 following the period.

Subsection 3 would now read as follows:

3. Intellectual disability means mental retardation as defined in the **most recent edition of the** "Diagnostic and Statistical Manual of Mental Disorders", American Psychiatric Association.

We are suggesting this additional amendment because we believe that the most current and up-to-date information should be used to define or discuss what constitutes an intellectual disability. This is critical as we work to understand and support issues around cognition and learning for individuals with Down syndrome. We ask that you carefully consider this request.

Thank you for your time.

Roxane Romanick
Designer Genes of ND, Inc.
P.O. Box 515
romanick@bis.midco.net
701-258-7421

#3
2142

Testimony
Engrossed Senate Bill 2142– Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
March 8, 2011

Chairman Weisz, members of the House Human Services Committee, I am Tina Bay, Director of the Developmental Disabilities Division of the Department of Human Services. I am here today on behalf of the Department to provide background information and to support Engrossed Senate Bill 2142. This bill will provide an act to amend and reenact sections of the North Dakota Century Code relating to changing mental retardation to intellectual disability and mentally retarded to intellectually disabled; and to provide for reconciliation by the Legislative Council of these terms in statutory provisions.

On October 5, 2010 the President signed into law "Rosa's Law" which changes references in many Federal statutes that currently refer to "mental retardation" to refer, instead to "intellectual disability".

The Department has received written approval from the Centers for Medicare and Medicaid Services to make the change from Intermediate Care Facility for the Mentally Retarded to Intermediate Care Facility for the Intellectually Disabled.

This concludes my testimony. I would be happy to answer any questions you may have.

2142

TESTIMONY ON SB 2142
HOUSE HUMAN SERVICES COMMITTEE
March 8, 2011
Department of Public Instruction

Mr. Chairman and members of the committee:

My name is Gerry Teevens and I am the Assistant Director of Special Education for the Department of Public Instruction. I am here to speak in support of SB 2142.

Amending the terminology of the disability category of 'mental retardation' to 'intellectual disability' is consistent with federal legislation commonly known as Rosa's law, signed into law on October 5, 2010 by President Obama. This bill changes references in many Federal statutes that currently refer to "mental retardation" to refer, instead, to "intellectual disability". This bill will substitute outdated, stigmatized terms in federal health, education, and labor laws.

The Department has had concerns for several years with the terminology of mental retardation. There have been inconsistent practices in the field. The Department has been consulting with the Department of Human Services about this bill.

This terminology change would not impact service, eligibility, or quality of special education services, but would promote more respectful terminology in referring to individuals with cognitive delays.

As we are all aware, people with intellectual disabilities and their families have expressed concerns about the use of the term "mental retardation" in legislation, policy and practices used throughout the United States.

During the 2009-10 school year, the ND *I.D.E.A. State Advisory Committee* in its advisory capacity to the ND Department of Public Instruction, recommended that the Department of Public Instruction encourage the U.S. Department of Education to replace the term "mental retardation" with "intellectual disability," and to work with Congress to modify Federal education statutes, policies, regulations and guidelines regarding this language.

Discussion among parents and professionals on the committee focused on these key challenges associated with the use of this term.

- Testimony from families about the negative and hurtful nature of the term "mental retardation", which is strongly associated with the slur "retard," that is now commonly used in many U.S. communities, especially among young people in school settings.
- The inaccuracy of the term "mental retardation," as a scientific descriptor; which may imply that if mental abilities are "retarded," people are somehow unable to learn.
- The reluctance of many educators to identify a student's primary disability as "mental retardation;" knowing that it will be rejected by their parents and thus making it difficult to secure needed special education services for the student.
- An awareness of the need to listen to the disability community; as recipients of special education services and graduates who have received a free and appropriate public education, they have expressed their preference to be considered as people first; and to be treated with dignity and respect.
- A sense of humility in understanding how words both shape perception and influence thoughts and behaviors that limit individual growth and place in society.

A year ago, a letter from the North Dakota Department of Public Instruction with those recommendations to replace the term "mental retardation" with "intellectual disability," was sent to the Assistant Secretary for Special Education and Rehabilitative Services. The letter was an expression of support for the federal legislation later signed into law by President Obama as Senate Bill 2781.

Mr. Chairman that concludes my testimony. I would be happy to answer any questions the committee may have.