



Alan Van Dyne

*Bill Analysis*  
*Legislative Service Commission*

## **Sub. H.B. 53**

127th General Assembly  
(As Passed by the House)

**Reps. Peterson, Yuko, Skindell, Ujvagi, Setzer, Dodd, Bacon, Collier, Fende, Chandler, Strahorn, White, R. Hagan, Wachtmann, B. Williams, Boyd, Brown, DeBose, Flowers, Goodwin, Hottinger, Huffman, Jones, Oelslager, Raussen, Uecker, Webster, Adams, Aslanides, Batchelder, Beatty, Bolon, Book, Brady, Bubp, Budish, Carano, Celeste, Combs, DeGeeter, Distel, Dolan, Domenick, Driehaus, Dyer, Evans, Foley, Garrison, Gibbs, Goyal, Harwood, Heard, Hite, Hughes, Latta, Letson, Luckie, Lundy, Mallory, Mandel, R. McGregor, Miller, Okey, Patton, Sayre, Schindel, Schneider, Stebelton, D. Stewart, J. Stewart, Sykes, Wagoner, S. Williams, Yates**

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### **BILL SUMMARY**

- Replaces certain terms in the Revised Code that refer to persons with certain conditions.

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### **CONTENT AND OPERATION**

#### **Background**

The Revised Code uses a number of terms to refer to persons with certain conditions. These terms include "lunatic," "idiot," "imbecile," "drunkard," "deaf and dumb," and "insane." Many of the sections that contain these words have not been amended since the Code was reorganized in 1953.

#### **The bill**

The bill eliminates the majority of terms described above in current law and, in most (though not all) cases, replaces them with the term, "incompetent person."<sup>1</sup> The bill defines this term to mean "a person who is so mentally impaired

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<sup>1</sup> The bill does not change the definition of "incompetent" used in R.C. 2111.37 and 2111.47 because R.C. 2111.01(D) currently defines "incompetent" for purposes of R.C. Chapters 2111. through 2131. to mean "any person who is so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's

as a result of a mental or physical illness or disability, mental retardation, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide." This definition is the same definition of "incompetent" in R.C. 2111.01 (the law governing guardianships), except that it excludes "any person confined to a correctional institution within this state."

The table, below, compares the terms in current law with the terms used in the bill. In a few sections, no replacement terms were added because the current language is unnecessary or repetitive and was, therefore, eliminated.

**Comparison table--current law vs. the bill**

Sections with terms referring to persons with certain conditions	Current law	The bill
701.01 Definitions for Revised Code Title VII	Insane	Language stricken <sup>2</sup>
	Lunatic	Language stricken
711.23 Plats--application for vacation and assessment of damages	Persons of insane mind	Incompetent person (new definition) <sup>3</sup>
1775.31 Dissolution of a partnership by court decree	Lunatic	Incompetent person (new definition--see footnote 3)

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self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide, or any person confined to a correctional institution within this state."

<sup>2</sup> The terms, "insane" and "lunatic," are not used in Title VII. Therefore, there is no need for them to be defined in R.C. 701.01.

<sup>3</sup> The bill defines "incompetent person" as "a person who is so mentally impaired as a result of a mental or physical illness or disability, mental retardation, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide." As stated above, this definition is the same as the definition of "incompetent" in R.C. 2111.01 (law governing guardianships), *except* that it excludes "any person confined to a correctional institution within this state."

Sections with terms referring to persons with certain conditions	Current law	The bill
2111.37 Guardian for nonresident--property rights	Incompetent <sup>4</sup> Habitual drunkard Idiot Imbecile Lunatic	Same as current law Language stricken Language stricken Language stricken Language stricken
2111.47 Termination of guardianship	Insane person  Restored to sanity	Incompetent person (see footnote regarding R.C. 2111.01(D) below)  Competent
2307.14 Civil actions--compensation and grounds for replacement of guardian ad litem or trustee	Insane person	Incompetent person (new definition--see footnote 3)
2317.021 "Client" defined; application of attorney-client privilege to dissolved corporation or association	Incompetent	Incompetent person (new definition--see footnote 3) <sup>5</sup>
2317.03 Limitations on testimony against a guardian or trustee	Deaf and dumb or insane person  Insane person	Incompetent person (new definition--see footnote 3)  Incompetent person (new definition--see footnote 3)

<sup>4</sup> R.C. 2111.01(D) defines "incompetent" in current law for purposes of R.C. Chapters 2111. through 2131. to mean "any person who is so mentally impaired as a result of a mental or physical illness or disability, or mental retardation, or as a result of chronic substance abuse, that the person is incapable of taking proper care of the person's self or property or fails to provide for the person's family or other persons for whom the person is charged by law to provide, or any person confined to a correctional institution within this state."

<sup>5</sup> R.C. 2317.021 also defines "incompetent" as used in R.C. 2317.02 (law governing privileged communications) and R.C. 2317.03 (law governing the limitations on testimony against a guardian or trustee) to have the same meaning as "incompetent person" described in the footnote above.

Sections with terms referring to persons with certain conditions	Current law	The bill
	Incompetent person	Incompetent person (new definition--see footnote 3)
2317.06 Proving testimony of absent witness	Insane  Because of any physical or mental infirmity is unable to testify	Language stricken  Reword current law: Unable to testify because of any physical or mental infirmity
2721.05 Determination of rights or legal relations	Lunatic	Incompetent person (new definition--see footnote 3)
3763.06 Gaming--liability of property for losses occurring thereon	Insane person or idiot	Incompetent person (new definition--see footnote 3)
4303.272 Safekeeping of liquor permits	Insane  Incompetent	Language stricken  Incompetent person (new definition--see footnote 3)
4399.05 Liability of owner of premises used for the sale of intoxicating liquors	Insane person or idiot	Incompetent person (new definition--see footnote 3)
4971.16 Reorganization of railroads	Insane	Incompetent person (new definition--see footnote 3)
5301.22 Effect of agreement with guardian	Idiot, lunatic, or insane person	Incompetent person (new definition--see footnote 3)
5305.17 Real property--guardian may elect for surviving spouse	Adjudged insane	Adjudged to be an incompetent person (new definition--see footnote 3)
5305.18 Real property--dower of incompetent person	Insane person  Insanity	Incompetent person (new definition--see footnote 3)  Grounds for the incompetency
5305.19 Real property--inquest of incompetence	Permanently insane	A permanently incompetent person (new definition--see footnote 3)

Sections with terms referring to persons with certain conditions	Current law	The bill
5305.20 Real property-- proceedings on report of inquest of incompetence	Insane person	Incompetent person (new definition--see footnote 3)
5305.21 Real property-- dower of an incompetent person may be barred	Insane person  The insanity of the insane person	Incompetent person (new definition--see footnote 3)  Grounds for incompetency of the incompetent person
5305.22 Real estate-- conveyed free of dower if spouse is incompetent	Insane  Inmate of a hospital for the insane in this state, or confined in the insane department of any epileptic hospital of this state, or any other state of the United States, or is an inmate of a hospital for the insane, or confined in the insane department of any hospital of the United States  Inmate  Insane spouse  Spouse is an insane inmate	Incompetent person (new definition--see footnote 3)  Admitted to either a hospital for persons with mental illness in this state or any other state of the United States or the psychiatric department of any hospital of the United States  Patient  Spouse who is an incompetent person  Spouse is an incompetent person
5307.19 Power of guardian to act for ward in partition	Idiot, imbecile, or insane person	Incompetent person (new definition--see footnote 3)
5307.20 Power of foreign guardian	Idiot or insane person	Incompetent person (new definition--see footnote 3)
5310.12 Registration of land titles--limitation of actions	Insane	Incompetent person (new definition--see footnote 3)

Sections with terms referring to persons with certain conditions	Current law	The bill
5711.05 Returns of taxable property; fiduciary returns	Idiot or insane person	Incompetent person (new definition--see footnote 3)
5711.07 Proper taxing district for listing property	Insane	Incompetent person (new definition--see footnote 3)
5907.06 Veterans home--person who cannot be admitted	Insane person	Person with a mental illness that causes the person to be dangerous to the community
5907.08 Veterans home--proceedings	Becomes insane  Resident's insanity	Becomes dangerous to the community due to a mental illness  Resident's mental illness
5907.09 Veterans--hearing by probate judge	Determine the sanity of the resident  State hospital for the insane	Determine the competence of the resident  State hospital for persons with mental illness

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## COMMENT

The terms, "lunatic," "idiot," "imbecile," "drunkard," "deaf and dumb," and "insane," that appear in the sections of current law that the bill amends are not defined for purposes of those sections. It is therefore unknown who exactly the General Assembly intended to encompass with these terms when these sections were enacted. As a result, it is possible that a court could find that the replacement of these terms with the term, "incompetent person" (as it is defined in the bill), constitutes a substantive change. This means that a court could find that the new term expands, diminishes, or changes in some other way the populations of persons described by the terms in current law.

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## HISTORY

ACTION	DATE
Introduced	02-21-07
Reported, H. Health	03-15-07
Passed House (98-0)	03-27-07

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