



Am. Sub. H.B. 53

127th General Assembly

(As Reported by S. Health, Human Services & Aging)

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, Bupp, 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

Sens. D. Miller, Cafaro, Morano, Padgett, Clancy

BILL SUMMARY

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

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."¹ The bill defines this term to mean "a person who is so mentally impaired

¹ 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

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 ²
	Lunatic	Language stricken
711.23 Plats--application for vacation and assessment of damages	Persons of insane mind	Incompetent person (new definition) ³
1775.31 Dissolution of a partnership by court decree	Lunatic	Incompetent person (new definition--see footnote 3)

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."

² 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.

³ 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 ⁴ 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) ⁵
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)

⁴ 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."

⁵ 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

Intent statement

(Section 3)

The bill includes a provision under which the General Assembly declares its intent that the bill's amendments to existing law are not substantive in nature but are intended to replace certain outdated terms with current, synonymous terms. The provision specifies that the bill's amendments are not to be construed to expand, impair, or otherwise affect any power, authority, duty, right, obligation, remedy, or liability contained in the statutes prior to the bill's effective date.

COMMENT

The bill replaces a number of different terms with a single term, "incompetent person," which is defined in a manner that may have a broader meaning than the terms that are being replaced. For example, the existing terms "insane" and "deaf and dumb" are not typically understood as terms that include persons who are impaired as a result of mental retardation or chronic substance

abuse, whereas the bill's definition of "incompetent person" includes these additional populations. Although the bill includes a statement specifying that the use of the term "incompetent person" is not intended by the General Assembly to be a substantive change, there is no way to predict whether the statutes resulting from the bill will be implemented without expanding, diminishing, or otherwise changing the categories of persons to which those statutes currently apply.

HISTORY

ACTION	DATE
Introduced	02-21-07
Reported, H. Health	03-15-07
Passed House (98-0)	03-27-07
Reported, S. Health, Human Services & Aging	04-19-07

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