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*Bill Analysis*  
Legislative Service Commission

## **Sub. S.B. 41**

127th General Assembly

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

**Sens. Spada, Gardner, Clancy, Schuler, Amstutz, Padgett, D. Miller, Smith, Cafaro, Schaffer**

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### **BILL SUMMARY**

- Replaces 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 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

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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 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."

same as the 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**

| <b>Sections with terms referring to persons with certain conditions</b> | <b>Current law</b>       | <b>The bill</b>                                     |
|---|--------------------------|---|
| 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) |
| 2111.37 Guardian for nonresident--property rights                       | Incompetent <sup>4</sup> | Same as current law                                 |
|   | Habitual drunkard        | Language stricken                                   |

<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."

<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."

| Sections with terms referring to persons with certain conditions  | Current law  | The bill  |
|---|--|---|
|   | Idiot<br><br>Imbecile<br><br>Lunatic   | Language stricken<br><br>Language stricken<br><br>Language stricken   |
| 2111.47 Termination of guardianship   | Insane person<br><br>Restored to sanity  | Incompetent person (see footnote regarding R.C. 2111.01(D) below)<br><br>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<br><br>Insane person<br><br>Incompetent person  | Incompetent person (new definition--see footnote 3)<br><br>Incompetent person (new definition--see footnote 3)<br><br>Incompetent person (new definition--see footnote 3) |
| 2317.06 Proving testimony of absent witness   | Insane<br><br>Because of any physical or mental infirmity is unable to testify | Language stricken<br><br>Reword current law:<br>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)   |

<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.

| <b>Sections with terms referring to persons with certain conditions</b>          | <b>Current law</b>                                 | <b>The bill</b>   |
|--|--|---|
| 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<br>Incompetent                              | Language stricken<br>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<br>Insanity                          | Incompetent person (new definition--see footnote 3)<br>Grounds for the incompetency                       |
| 5305.19 Real property--inquest of incompetence                                   | Permanently insane                                 | A permanently incompetent person (new definition--see footnote 3)   |
| 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<br>The insanity of the insane person | Incompetent person (new definition--see footnote 3)<br>Grounds for incompetency of the incompetent person |

| Sections with terms referring to persons with certain conditions      | Current law   | The bill  |
|---|---|---|
| 5305.22 Real estate-- conveyed free of dower if spouse is incompetent | <p>Insane</p> <p>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</p> <p>Inmate</p> <p>Insane spouse</p> <p>Spouse is an insane inmate</p> | <p>Incompetent person (new definition--see footnote 3)</p> <p>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</p> <p>Patient</p> <p>Spouse who is an incompetent person</p> <p>Spouse is an incompetent person</p> |
| 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)   |
| 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  |

| Sections with terms referring to persons with certain conditions | Current law   | The bill   |
|--|---|--|
| 5907.08 Veterans home-- proceedings                              | Becomes insane<br><br>Resident's insanity                                 | Becomes dangerous to the community due to a mental illness<br><br>Resident's mental illness    |
| 5907.09 Veterans--hearing by probate judge                       | Determine the sanity of the resident<br><br>State hospital for the insane | Determine the competence of the resident<br><br>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.

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**COMMENT**

In a number of instances the bill replaces a single term, such as "insane" with the term "incompetent person" which may have a broader meaning.

Under the bill, the definition of "incompetent person" includes categories of individuals that generally are not understood as being included within the meaning of some of the terms the bill replaces. For example, the existing terms "insane" and "deaf and dumb" are not understood as terms that include individuals 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 specifies that the use of the term "incompetent person" as a replacement term is not intended 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 groups of individuals to which those statutes apply.

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## HISTORY

| ACTION                                      | DATE     |
|---|----------|
| Introduced                                  | 02-20-07 |
| Reported, S. Health, Human Services & Aging | 03-22-07 |

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