



www.lsc.ohio.gov

OHIO LEGISLATIVE SERVICE COMMISSION

Office of Research
and Drafting

Legislative Budget
Office

H.B. 148
135th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Dell'Aquila

Sarah A. Maki, Attorney

SUMMARY

- Requires that the offense of criminal child enticement is committed with a sexual motivation.
- Removes requirements that criminal child enticement is committed if both of the following apply:
 - The actor does not have the express or implied permission of the parent, guardian, or other custodian.
 - The actor is not a person who provides emergency services or is not acting under the direction of a board of education, or is such a person but is not acting in the scope of the person's duties.
- Removes the affirmative defense for criminal child enticement that specifies that the actor undertook the activity in response to a bona fide emergency situation or that the actor undertook the activity in a reasonable belief that it was necessary to preserve the health, safety, or welfare of the child.

DETAILED ANALYSIS

Criminal child enticement

Offense – under current law

Under current law, the offense of criminal child enticement prohibits a person from doing all of the following:¹

¹ R.C. 2905.05(A) to (C).

1. By any means and without privilege to do so, knowingly soliciting, coaxing, enticing, or luring any child under 14 years of age to accompany the person in any manner, including entering into any vehicle or onto any vessel, whether or not the offender knows the age of the child, if both of the following apply:
 - a. The actor does not have the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity.
 - b. The actor is not a law enforcement officer, medic, firefighter, or other person who regularly provides emergency services, and is not an employee or agent of, or a volunteer acting under the direction of, any board of education, or the actor is any of such persons, but at the time the actor undertakes the activity, the actor is not acting within the scope of the actor's lawful duties in that capacity.
2. With a sexual motivation, violating (1) above.
3. For any unlawful purpose other than, or in addition to, that proscribed by (1) above, engaging in any activity described in (1) above.

In *State v. Romage*, the Supreme Court of Ohio held that (1) above was unconstitutionally overbroad. The court held that while the statute has an admirable purpose, which is to prevent child abductions or the commission of lewd acts with children, it cannot include what is constitutionally protected activity. Even though the state has a legitimate and compelling interest in protecting children from abduction and lewd acts, a statute intended to promote legitimate goals that can be regularly and improperly applied to prohibit protected expression and activity is constitutionally overbroad. The statute fails to require that the prohibited solicitation, coaxing, enticing, or luring occur with the intent to commit any unlawful act.²

Offense – under the bill

The bill modifies the offense of criminal child enticement in two ways. First, it removes “with a sexual motivation” from (2) above and adds it to (1) above. Second, it removes (a) and (b) above. Under the bill, the offense of criminal child enticement prohibits a person from doing all of the following:³

1. By any means and without privilege to do so, and with a sexual motivation, knowingly soliciting, coaxing, enticing, or luring any child under 14 years of age to accompany the person in any manner, including entering into any vehicle or onto any vessel, whether or not the offender knows the age of the child.
2. For any unlawful purpose other than, or in addition to, that proscribed by (1) above, engaging in any activity described in (1) above.

² *State v. Romage*, 138 Ohio St.3d 390, 393-394 (2013).

³ R.C. 2905.05(A) and (B).

Penalty

Under continuing law, the penalty for a violation of the offense is generally a first degree misdemeanor, but may be a fifth degree felony depending on the circumstances of the offense.⁴

Affirmative defense

The bill removes the affirmative defense to the offense of criminal child enticement. Under current law, it is an affirmative defense to a charge of criminal child enticement that the actor undertook the activity in response to a bona fide emergency situation or that the actor undertook the activity in a reasonable belief that it was necessary to preserve the health, safety, or welfare of the child.⁵

Definitions

The bill uses the following continuing law definitions:

1. **“Sexual motivation”** means a purpose to gratify the sexual needs or desires of the offender.⁶
2. **“Vehicle”** means everything on wheels or runners, including motorized bicycles, but does not mean electric personal assistive mobility devices, low-speed micromobility devices, vehicles that are operated exclusively on rails or tracks or from overhead electric trolley wires, and vehicles that belong to any police department, municipal fire department, or volunteer fire department, or that are used by such a department in discharge of its functions.⁷
3. **“Vessel”** includes every description of craft, including nondisplacement, multimodal craft, and submersibles, being used or capable of being used as a means of transportation on water.⁸

Technical changes

The bill makes necessary cross-reference changes.⁹

⁴ R.C. 2905.05(C).

⁵ R.C. 2905.05(D).

⁶ R.C. 2905.05(D)(1) and 2971.01(J), not in the bill.

⁷ R.C. 2905.05(D)(2) and 4501.01(A), not in the bill.

⁸ R.C. 2905.05(D)(3) and 1546.01, not in the bill.

⁹ R.C. 2950.01(A)(10), (C)(2), and (E)(1)(e).

HISTORY

Action	Date
Introduced	04-04-23
