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H.B. 593
135th General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Dell'Aquila and Williams

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SUMMARY

- Requires that the offense of criminal child enticement is committed with a sexual motivation or an unlawful purpose.
- 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 the bill

The bill modifies the offense of criminal child enticement by requiring that a person act with a sexual motivation or an unlawful purpose. The bill prohibits a person from doing the following: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 either of the following apply:
 - The person acts with a sexual motivation;
 - The person acts with an unlawful purpose.

¹ R.C. 2905.05(A).

Offense – under current law

Under current law, the offense of criminal child enticement prohibits a person from doing any of the following:²

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.³

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 for the offense of criminal child enticement. Under current law, it is an affirmative defense to a charge of criminal child enticement that the

² R.C. 2905.05(A) to (C).

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

⁴ R.C. 2905.05(B).

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

Allied offenses of similar import

The bill provides that the prosecution of a person for criminal child enticement does not preclude prosecution of that person under another section in R.C. Chapter 2905. An act that can be prosecuted under the criminal child enticement section or another section in R.C. Chapter 2905 may be prosecuted under the criminal child enticement section, the other section, or the criminal child enticement section and the other section. However, if the charges are based on the same conduct and involve the same victim, the indictment or information may contain counts for all such offenses, but the person may be convicted of only a violation of R.C. Chapter 2905.⁶

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.⁷
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.⁸
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.⁹

Technical changes

The bill makes necessary cross-reference changes.¹⁰

⁵ R.C. 2905.05(D).

⁶ R.C. 2905.05(C).

⁷ R.C. 2905.05(D)(1) and 2971.01(J), not in the bill.

⁸ R.C. 2905.05(D)(2) and 4501.01(A), not in the bill.

⁹ R.C. 2905.05(D)(3) and 1546.01, not in the bill.

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

HISTORY

Action	Date
Introduced	05-15-24
