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May 28, 2025

Ohio House Judiciary Committee
Attn. Chairman, Honorable Jim Thomas
77 S. High St, 11th Floor
Columbus, OH 43215

Re: Proponent Testimony, HB 168

Chair Thomas, Vice Chair Mathews, Ranking Member Isaacsohn, and Members of the Ohio House Judiciary Committee, thank you for your consideration of HB168, a bipartisan proposal to bring Ohio's child enticement statute (ORC 2905.05) into constitutional compliance. I wish to also specifically thank Representatives Sean Brennan and Josh Williams, for jointly re-introducing this measure, subsequent to HB148 and HB593 in the 135th General Assembly regarding the same subject--the latter, jointly introduced with Representative Williams.

As currently written, ORC 2905.05(A) bars a person without a legal privilege from knowingly soliciting, coaxing, enticing, or luring a child under age 14 to accompany the person in any manner. This code section has remained on the books without amendment despite being declared unconstitutional in 2014 in *State v. Romage*¹ wherein the Ohio Supreme Court held it was unconstitutionally overbroad in that it prohibited otherwise constitutionally protected innocent conduct. That case centered around an offer of money by the accused to a neighborhood child to help move boxes into his apartment.

The result has been substantial uncertainty among law enforcement and the courts in proceedings regarding this statute, which should be part of Ohio's first line of defense against child abusers and child traffickers. Courts have been compelled to dismiss criminal child enticement charges under the statute. In some instances, civil claims were filed and settlements paid to affected parties. Prosecutors have been unable to charge potential violators under this statute.

HB168 seeks to restore protections for Ohio's children and preserve community safety by crafting a narrowed and constitutionally compliant statutory definition of prohibited acts by incorporating clearly defined standards to assure that the requirements of the statute are clearly understood in the simplest language possible as required by the legal Rule of Lenity.²

The Ohio Supreme Court ruling in *Romage* held [in pertinent part] that:

¹ *State v. Romage*, 138 Ohio St.3d 390, 2014-Ohio-783

² The Rule of Lenity is a common law concept in legislative drafting to ensure that defendants are not unfairly punished due to ambiguous or overly broad statutes. This principle mandates that any lack of clarity in criminal statutory language must be resolved in favor of the defendant, thereby safeguarding against unintended results. This requirement highlights the importance of precise drafting in the clearest and simplest terms.

"...protection of members of the public from sexual predators and habitual sex offenders is a paramount governmental interest"... "Certainly, the safety and general welfare of children is even more deserving of governmental protection. But a statute that defines criminal conduct should not include what is constitutionally protected activity."

Significantly, the Court held that the prohibited solicitation, coaxing, enticing, or luring must occur with the intent to commit an unlawful act. In effect, the Court is requiring statutory clarification of the *mens rea* requirement for conviction. HB168 does exactly that by prohibiting a person without a privilege from doing the following:

“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.”

Although there have been intervening attempts to amend the statute since 2014, the unenforceable overly broad provision in section (A) still remains--purporting to prohibit otherwise legal acts.

HB168 provides that the prosecution of a person for criminal child enticement does not preclude prosecution of that person under another section of the Revised Code in 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.

Last week, I watched the Ohio Channel Judiciary Committee meeting with considerable interest. Representatives Williams and Brennan made clear and convincing presentations in sponsoring this important statutory amendment. The Committee members follow-up comments and questions were also insightful. They touched upon two issues that have arisen over the time this matter has been before the House: First is the question of removing specific exemptions for certain individuals from operation of the statute (i.e. the question of privilege), and Second is the removal of affirmative defenses from the original statute.

Privilege. In initially defining to whom it applies and does not apply, ORC 2905(A) states in pertinent part:

"No person, by any means and without privilege to do so, shall..." [Emphasis added].

The requirement that an offense occurs only if the accused acts without a legal privilege makes redundant the existing statutory enumeration of specific exemptions such as parental permission, guardians, custodians, emergency conditions, actors under authority of boards of education, police, firefighters, and other actors performing official duties, etc. Listing these several potential holders of a privilege to act adds nothing to the clarity of the statute. An actor either holds a legal privilege to act or does not.

The etymology of the word "privilege," originates from a Latin term meaning "law applying to one person," as Representative Williams suggested in his sponsor testimony last week. "Privilege," in this

context means a legal right, advantage, or immunity granted by law to a particular person, group, or entity.³

Therefore, since violation of the statute (even as currently written), requires that the accused must have acted without a legal privilege, both statutory clarity and brevity of language are achieved without appending a lengthy (and perhaps incomplete) list of instances in which the privilege applies. The editing to simplify this prerequisite is analogous to HB168 proposing to remove the list of potential affirmative defenses currently contained in the statute.

Affirmative Defense. An “affirmative defense” is any special defense that, although not denying that the Defendant committed the objective acts constituting the offense charged, denies criminal responsibility for those acts. Examples of affirmative defenses include self-defense, alibi, emergency, welfare of the child, permission, insanity, entrapment, etc. These defenses involve an excuse or justification which the Defendant can raise and be required to prove with supporting evidence, even though not designated as affirmative defenses in the statute.⁴

HB168’s clarification of the *mens rea* requirement for conviction as well as retention of the legal privilege protection obviates any need for a statutory designation of affirmatives defenses since the prosecution must show by evidence beyond a reasonable doubt that the Defendant acted without a legal privilege and acted with a sexual motivation or for an unlawful purpose. Otherwise, the criminal charge would fail. Representative Brennan mentioned in his sponsor testimony that the concept of privilege in this context has the same outcome as proof of an affirmative defense.

Clearly, the magnitude of the child abuse and child trafficking crisis is a stain on our society. Last April, for example, during National Child Abuse Prevention Month, the FBI conducted a five day operation to arrest child sex predators across the country, arresting 11 people just in Cleveland. Since the start of 2025, the Cleveland FBI Field Office has arrested 28 individuals for violent crimes against children, and in 2024, identified and arrested 37 individuals.

The prevalence of these terrible crimes is escalating, including online and through cell phones. The vigilance of parents and others in protecting our children from child abuse is not enough. The safety of our community and our most vulnerable also requires clear statutes that meet constitutional requirements, that will deter potential violators, and that can be properly enforced when violated.

Together with Ohio’s other laws against these awful crimes, HB168 will restore an important tool to the available enforcement measures and provide additional deterrence messaging to potential offenders by clarifying the description and consequences for violation.

Thank you for considering this important measure. I urge your support for HB168 and would be pleased to respond to your questions.

Respectfully Submitted,

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³ The roots of the word “privilege” are found in the words “private” and “legal.”

⁴ Generally, the Defendant has the burden of proving an affirmative defense by a preponderance of evidence. After the Defendant meets this burden, the Prosecution has the burden of proving beyond a reasonable doubt that the affirmative defense did not exist.