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Sponsor Testimony
H.B. 168: Require motivation or purpose to commit criminal child enticement

Good morning Chair Manning, Vice Chair Reynolds, Ranking Member Hicks-Hudson, and Members of the Senate Judiciary Committee – Senators Blessing, Cutrona, Gavarone, and Smith, thank you for the opportunity to present H.B. 168, which passed unanimously out of the House committee and on the floor. This proposal will bring Ohio's child enticement statute (O.R.C. 2905.05) into constitutional compliance.

In 2014, the Ohio Supreme Court ruled in *State v. Romage* that Ohio's child-enticement statute O.R.C. §2905.05(A) is unconstitutionally overbroad because it prohibits a significant amount of otherwise constitutionally protected activity and could result in criminal charges against a person in many innocent situations.

In that case, it was originally charged that the Defendant, Mr. Romage, had offered money to a neighborhood child to carry some boxes to his apartment, in violation of O.R.C. §2905.05(A). The law bars a person without a legal privilege (i.e. an individual with a legal right to act, which is separate and distinct from the rights of others) from knowingly soliciting, coaxing, enticing, or luring a child under age 14 to accompany the person in any manner.

The Supreme Court ruling in *Romage* held that "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*." The Court found that the prohibited solicitation, coaxing, enticing, or luring must occur with the intent to commit an unlawful act.

Although there have been subsequent attempts to amend the statute, this provision in section (A) remains problematic. For example, many law enforcement officials in my House District have raised this issue, and enforceability has been a significant problem. In one case locally, a suit was filed against the municipality by the Defendant after charges under the current statute were dismissed against him.

Very simply, H.B. 168 brings the statute into constitutional compliance by prohibiting a person 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:

1. 1.) The person acts with a sexual motivation;
1. 2.) The person acts with an unlawful purpose.

The bill 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. 2905 may be prosecuted under the criminal child enticement section, the other section, or the criminal child enticement section and the other section. However, the bill prohibits the stacking of sentences per the advice of members last General Assembly.

I wish to thank my joint sponsor, Representative Williams, for working with me on this important legislation that will keep Ohio's children safe, as well as former State Representative Rick Dell'Aquila for his work on this bill in the last General Assembly.

Thank you for considering this important measure. We invite your questions.