Ohio House of Representatives

State Representative Mike Duffey, 21st District

Sponsor Testimony – Rep. Duffey
HB 374 – Child Enticement Law Update (Duffey, Cupp)

Ohio House – Criminal Justice Committee – November 14, 2017

Chair Manning, Vice Chair Rezabek, Ranking Member Celebrezze, members of the House Criminal Justice committee, thank you for the opportunity to testify regarding House Bill 374, legislation I am joint sponsoring with former Ohio Supreme Court Justice, State Representative Robert Cupp, to strengthen Ohio's child enticement law in the wake of the Ohio Supreme Court's 2014 decision, *State v Romage,* and a situation that arose this summer in my district.

Romage nullified Ohio's child enticement statute with the exception of a few provisions, including one enacted in 2014 that requires proof of intent, i.e. an "unlawful purpose." The functional outcome of this case law is that child predators currently have a free pass to entice children in Ohio unless they commit an act of stupidity that openly reveals their purpose.

First, a bit of background. Ohio Revised Code 2905.05 is Ohio's child enticement statute. It dates to at least 2001 and the legislatures has amended it at least four times, including in SB 293 in the last session. In summary, the language reads:

"No person, by any means and without privilege to do so, shall knowingly solicit, coax, entice or lure any child under fourteen years of age to accompany the person… [without] express or implied permission of the parent [etc.] [unless] law enforcement [and a few other classes]… It is an affirmative defense [if the reason was] a bona fide emergency… or… reasonable belief…was necessary to preserve the health, safety or welfare of the child."

This seems simple enough. An adult male, for example, may not legally ask a six-year-old girl on the sidewalk to accompany him to some remote place in his car without parental permission. We can support this common sense approach as parents and defenders of children. Yet the court has expanded this plain intent to encompass a constitutional infringement on protected free speech activity, and on that basis, struck down Ohio's child enticement statute.

In *State v. Romage*, decided March 6, 2014, the accused, Jason Romage, was charged in Columbus after allegedly asking a child to carry some boxes to his apartment in exchange for money. It remains unclear if that was innocent behavior or not, but it suffices to say, law enforcement apparently did not have clear evidence of unlawful intent in this case.

The Ohio Supreme Court ruled that Ohio's child enticement law was unconstitutional because it "sweeps within its prohibitions a significant amount of constitutionally protected activity."

Essentially, what the court did was rule that Ohio could not apply strict liability to the general act of child enticement. Instead, to prosecute a sexual predator attempting to entice a child, law enforcement would need to prove "unlawful intent" by showing evidence, such as a knife and duct tape in the trunk, or an outright confession by the accused that he wanted to do something unlawful, such as a lewd act in front of the child. …more on *that* shortly.

The problem with this standard is that it only works when the criminal is stupid enough to make their crime that obvious. It also disregards existing strict liability laws in Ohio and in other states that, by their nature, strike at inherently dangerous behavior, regardless of whether or not someone engaging in that behavior could theoretically have a lawful purpose.

The most obvious example of a strict liability law in Ohio is motor vehicle speeding. In itself, speeding does not directly cause harm. I think a number of legislators could attest to this fact; perhaps as they are rushing on Ohio's highways to the statehouse.

Nevertheless, the legislature has seen fit to deem speeding an inherently dangerous behavior because it sometimes, or perhaps even often, leads to a higher likelihood of injury and a higher likelihood of *greater* injury than if the vehicle were not exceeding the speed limit.

Similarly, I might argue that the act of a stranger enticing a child under the age of 14, with no permission from the child's parent, and no ostensible necessity or public welfare reason, is an inherently dangerous behavior that ought to be discouraged, regardless of whether someone intended in that singular particular case to cause actual harm or injury.

So what is the problem now? Did the legislature fix the statute with the addition of subsection 2905.05 (C), "unlawful intent", and it is now perfect? The answer is no, the law is not perfect.

This past August, parents in my hometown of Worthington, Ohio panicked when a series of incidents occurred in which an adult male driving a silver hatchback vehicle, over a period of several days, approached multiple girls under the age of nine on the street in their neighborhoods to come with him in his vehicle. The vehicle was rocking slightly as he stared at his victims, ask he enticed these little girls to join him, but no actual lewd act was witnessed.

As the number of incidents increased, parents increasingly became agitated, until at last Worthington Police were finally able to arrest the suspect, Jonathan Ringel. The city law director, seeing the Ohio Revised Code as it stands today, attempted to charge Ringel with enticement. But the Franklin County judge dismissed the case, citing *Romage*. Worthington would need evidence of "unlawful intent" to charge Ringel, it seemed.

It did not matter that Ringel had been recently released after three years into a twenty-five year sentence for sex offenses in Virginia. It did not matter that he did not know any of these children or have any even remotely ostensible reason to talk with them. And it did not matter that he repeatedly attempted to lure these young girls into his vehicle for no apparent reason. Everything Jonathan Ringel did in Worthington, Ohio this August was perfectly legal according to the Ohio Supreme Court. And it remains legal today.

Right now, as we speak, a convicted child rapist in Ohio could repeatedly approach random children in our community, over a period of days or weeks, with no legitimate reason and the current standard under the law is that this would not be a chargeable offense.

I am sorry, but this defies common sense. Ohio's statute, with its focus on children under the age of 14, is not simply focused on protecting minors. It is focused on protecting our most vulnerable minors. Children who are often too young to know about stranger danger.

And in my mind, there is simply no compelling right for strangers to be able to ask these very young children to come with them without some privilege to do so. And yes, I believe, on the first offense, such a person should be chargeable for a misdemeanor. This is a modest penalty for a behavior we should want to discourage.

It is worth noting that the dissent was led by Justice Judy French, joined by Chief Justice Maureen O'Connor, while former justice Pfeifer and nearly former justice O'Neill were in the majority. I am not sure *Romage* would be decided today as it was at that time. Indeed, I believe Rep. Cupp has opined it likely would not and other state attorneys have agreed.

So what are we proposing? HB 374 would restore strict liability in three circumstances:

1. The offender is a current SORN registry offender, i.e. a known sex offender.

2. The offender has zero relationship to the family or child. In other words, they really have no excuse to be given the benefit of the doubt.

3. The offender engages in a pattern of conduct, all of which is absent of parental permission or arising out of need or public welfare. This is the "one occurrence might be innocent, but six times is presumed not" provision.

HB 374 is more narrow than ORC 2905.05 as nullified under *Romage*. For that reason, it does not necessarily conflict with that opinion.

It is a common sense solution to a real world problem. On behalf of the parents in my district and across Ohio who believe this kind of behavior is inherently dangerous, I urge you to enact this legislation.

And with so many smart legal minds on this committee, if you do have reservations about this legislation, I ask that you personally help amend the legislation to make it right. I believe we can craft the right balance between free speech rights and protecting our children.

Thank you, Mr. Chairman. I would be happy to take any questions at this time.

# # #