



# OHIO LEGISLATIVE SERVICE COMMISSION

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## Bill Analysis

Jeff Hobday

### **H.B. 374**

132nd General Assembly  
(As Introduced)

**Reps.** Duffey and Cupp, Hughes, Kick, Becker, Perales, Boggs, O'Brien

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### **BILL SUMMARY**

- Creates new criminal prohibitions within the offense of criminal child enticement that are similar to the general prohibition but include additional elements.
  - Classifies criminal child enticement as a tier I sex offense when committed by a registered sex offender.
  - Modifies existing penalties and creates additional ones for criminal child enticement.
  - Expands an affirmative defense that the actor undertook the activity in response to a bona fide emergency situation or with a reasonable belief that it was necessary to preserve the health, safety, or welfare of the child to apply to the added prohibitions.
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### **CONTENT AND OPERATION**

#### **Criminal child enticement**

The bill creates two new prohibitions within the offense of "criminal child enticement," modifies the penalties for criminal child enticement, and classifies criminal child enticement as a tier I sex offense when the offense is committed by a registered sex offender.

#### **Background**

In *State v. Romage*,<sup>1</sup> the Ohio Supreme Court invalidated the general prohibition under the offense of "criminal child enticement," set forth in R.C. 2905.05(A). The Court

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

held that the prohibition is unconstitutionally overbroad in violation of the First Amendment to the United States Constitution. In the Court's opinion, "The statute's broad language [in division R.C. 2905.05(A)] can support criminal charges against a person in many innocent scenarios."<sup>2</sup> The Court did not consider the constitutional validity of the other two prohibitions under the offense in existing law.<sup>3</sup>

### **Added prohibitions**

The bill creates two new prohibitions within the offense of "criminal child enticement." First, the bill prohibits a person, by any means and without privilege to do so, from soliciting, coaxing, enticing, or luring any child under age 14 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 all of the following apply:<sup>4</sup>

- (1) The person previously has been convicted of or pleaded guilty to a sexually oriented offense in this state or a substantially similar violation of a law of another state or the United States.
- (2) The person has a duty to comply with the Sex Offender Notification and Registration Law.
- (3) 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.

The bill similarly prohibits a person, by any means and without privilege to do so, from soliciting, coaxing, enticing, or luring any child under age 14 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 all of the following apply:<sup>5</sup>

- (1) 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;
- (2) 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

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<sup>2</sup> *Romage* at ¶ 11.

<sup>3</sup> R.C. 2905.05(B) and (C), as designated in existing law.

<sup>4</sup> R.C. 2905.05(C).

<sup>5</sup> R.C. 2905.05(D).

actor undertakes the activity, the actor is not acting within the scope of the actor's lawful duties in that capacity;

- (3) The person has no preexisting relationship with the child or the child's family, or the act is of the same or similar character as two or more other violations of the general prohibition against criminal child enticement (described under "**Existing prohibitions**") committed by the person that are connected together, constitute parts of a common scheme or plan, or are part of a course of criminal conduct.

The bill does not amend the three existing prohibitions under the offense, as described under "**Existing prohibitions**."

### **Existing prohibitions**

Existing R.C. 2905.05 sets forth three prohibitions under the offense of "criminal child enticement." The prohibitions are as follows:

(1) Existing R.C. 2905.05(A) prohibits a person, by any means and without privilege to do so, from knowingly soliciting, coaxing, enticing, or luring any child under age 14 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) Existing R.C. 2905.05(B) prohibits a person, with a sexual motivation, from violating the general prohibition described above.

(3) Existing R.C. 2905.05(C)<sup>6</sup> prohibits a person, for any unlawful purpose other than, or in addition to, that proscribed by the general prohibition under the offense, from engaging in any activity described in that general prohibition.

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<sup>6</sup> R.C. 2905.05(E) in the bill.

## Penalties for criminal child enticement

Under the bill, a violation of the first of the two new prohibitions described in "**Added prohibitions**," above, is a fourth degree felony and the offender is classified as a tier I sex offender under the Sex Offender Registration and Notification Law.<sup>7</sup> Under current law, criminal child enticement generally is a first degree misdemeanor, but if the offender previously has been convicted of criminal child enticement, rape, sexual battery, or the former offense of felonious sexual penetration, or kidnapping or gross sexual imposition when the victim of the prior offense was under age 17 at the time of the offense, it is a fifth degree felony.<sup>8</sup>

Under the bill, a violation of the second new prohibition described in "**Added prohibitions**," above, or any of the existing prohibitions is generally a first degree misdemeanor, but if the offender previously has been convicted of a violation of any of those prohibitions or a violation of any substantially similar law of another state or the United States, the bill specifies that criminal child enticement is a fifth degree felony. The bill removes references in the penalty enhancement to prior convictions of rape, sexual battery, felonious sexual penetration, and gross sexual imposition, but specifies that criminal child enticement is a fourth degree felony if the offender previously has been convicted of kidnapping and the kidnapping victim was under age 17 at the time of the offense.<sup>9</sup>

## Defense to criminal child enticement charges

Under existing law, unchanged by the bill, it is an affirmative defense to a charge of a violation of the general "criminal child enticement" prohibition that the actor undertook the activity in response to a *bona fide* emergency situation or with a reasonable belief that it was necessary to preserve the health, safety, or welfare of the child. The bill expands this affirmative defense to apply to a charge of a violation of either of the two prohibitions created by the bill.<sup>10</sup>

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## HISTORY

ACTION	DATE
Introduced H0374-I-132.docx/ar	10-10-17

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<sup>7</sup> R.C. 2905.05(G)(3) and 2950.01(A)(10) and (E)(1)(e).

<sup>8</sup> R.C. 2905.05(E), as designated in current law.

<sup>9</sup> R.C. 2905.05(G)(2).

<sup>10</sup> R.C. 2905.05(F).

