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*Final Analysis*  
Legislative Service Commission

## **S.B. 312**

123rd General Assembly  
(As Passed by the General Assembly)

**Sens. Latta, Finan, Mumper, Oelslager, Harris, Latell**

**Reps. Womer Benjamin, Willamowski, Corbin, O'Brien, Winkler, Clancy, Barrett, Kilbane, Widener, Verich**

**Effective date:** \*

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### **ACT SUMMARY**

- Expands the offense of criminal child enticement so that it prohibits knowingly soliciting, coaxing, enticing, or luring a child under 14 years of age to accompany the person in any manner.

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### **CONTENT AND OPERATION**

#### **Continuing law**

##### **Prohibition against criminal child enticement**

Continuing law prohibits a person, by any means and without "privilege" to do so (see **COMMENT**), from knowingly soliciting, coaxing, enticing, or luring any child under 14 years of age to enter into any vehicle, whether or not the offender knows the age of the child, if both of the following apply (R.C. 2905.05(A)):

(1) The actor does not have the express or implied permission of the child's parent, guardian, or other legal custodian 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 actor undertakes the activity, the actor is not acting within the scope of the actor's lawful duties in that capacity.

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

### Penalty

Under continuing law, a violation of the above-described prohibition is the offense of "criminal child enticement." The offense generally is a misdemeanor of the first degree, but, if the offender previously has been convicted of criminal child enticement, the offense of "rape" or "sexual battery," a violation of R.C. 2907.12 (that section has been repealed; it formerly contained the offense of "felonious sexual penetration," which has been incorporated into the offense of "rape"), or the offense of "kidnapping" or "gross sexual imposition" when the victim of that prior offense was under 17 years of age at the time of the offense, criminal child enticement is a felony of the fifth degree. (R.C. 2905.05(C).)

### Affirmative defense

Under continuing law, it is an affirmative defense to a charge of a violation of the above-described prohibition 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 (R.C. 2905.05(B)).

### Operation of the act

The act expands the prohibition that constitutes the existing offense of criminal child enticement so that the prohibition *also applies when the offender solicits, coaxes, entices, or lures the child under 14 years of age to accompany the offender other than into a vehicle.* Under the act, the provision prohibits a person, by any means and without privilege to do so, from 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,* whether or not the offender knows the age of the child, if both of the additional elements set forth above in paragraphs (1) and (2) of "**Prohibition against criminal child enticement**" apply. (R.C. 2905.05(A).)

The act does not change the penalties for the offense, or the affirmative defense to it (R.C. 2905.05(B) and (C)).

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## COMMENT

Under R.C. 2901.01, not in the act, as used in the Revised Code, "privilege" means an immunity, license, or right conferred by law, bestowed by express or implied grant, arising out of status, position, office, or relationship, or growing out of necessity.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-29-00	p. 1945
Reported, S. Judiciary	12-06-00	p. 2305
Passed Senate (33-0)	12-06-00	p. 2314
Reported, H. Criminal Justice	12-07-00	pp. 2472-2473
Passed House (91-3)	12-12-00	pp. 2487-2488

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