



S.B. 312*
123rd General Assembly
(As Reported by H. Criminal Justice)

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

Reps. Womer Benjamin, Willamowski

BILL 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.

CONTENT AND OPERATION

Existing law

Prohibition against criminal child enticement

Existing law prohibits a person, by any means and without "privilege" to do so (see **COMMENT 1**), from knowingly soliciting, coaxing, enticing, or luring any child under 14 years of age to enter into any "vehicle" (see **COMMENT 2**), 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" (see **COMMENT 3**), 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.

* *This analysis was prepared before the report of the House Criminal Justice Committee appeared in the House Journal. Note that the list of co-sponsors and legislative history may be incomplete.*

Penalty

Under existing 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child enticement, the offense of "rape" or "sexual battery," a violation of R.C. 2907.12 (that section has been repealed; it formerly contained the offense of "felonious sexual penetration," which has been incorporated into the offense of "rape"), or the offense of "kidnapping"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 existing 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 bill

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

COMMENT

1. Under existing R.C. 2901.01, not in the bill, 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.

2. As used in the existing offense of criminal child enticement, unchanged by the bill, "vehicle" has the same meaning as in existing R.C. 4501.01. Under existing R.C. 4501.01, not in the bill, "vehicles" means everything on wheels or runners, including motorized bicycles, but does not mean vehicles that are operated exclusively on rails or tracks or from overhead electric trolley wires and vehicles that belong to any police department, municipal fire department, or volunteer fire department, or that are used by such a department in the discharge of its functions.

3. Under existing R.C. 2901.01, not in the bill, as used in the Revised Code, "law enforcement officer" means any of the following: (a) a sheriff, deputy sheriff, constable, police officer of a township or joint township police district, marshal, deputy marshal, municipal police officer, member of a police force employed by a metropolitan housing authority under R.C. 3735.31(D), or State Highway Patrol trooper, (b) an officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority, (c) a mayor, in the mayor's capacity as chief conservator of the peace within the mayor's municipal corporation, (d) a member of an auxiliary police force organized by county, township, or municipal law enforcement authorities, within the scope of the member's appointment or commission, (e) a person lawfully called pursuant to R.C. 311.07 to aid a sheriff in keeping the peace, for the purposes and during the time when the person is called, (f) a person appointed by a mayor pursuant to R.C. 737.01 as a special patrolling officer during riot or emergency, for the purposes and during the time when the person is appointed, (g) a member of the Ohio organized militia or the armed forces of the United States, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence, (h) a prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor, (i) an Ohio Veterans' Home police officer appointed under R.C. 5907.02, (j) a member of a police force employed by a Regional Transit Authority under R.C. 306.35(Y), or (k) a special police officer employed by a port authority under R.C. 4582.04 or 4582.28.

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 s0312-rh.123/kl	---	---