



Ohio Legislative Service Commission

Final Analysis

Dennis M. Papp

Sub. S.B. 64

130th General Assembly
(As Passed by the General Assembly)

- Sens.** Beagle and Manning, Balderson, Burke, Faber, Hughes, Jones, Lehner, Obhof, Peterson, Schaffer, Widener, LaRose, Coley, Hite, Jordan, Oelslager, Patton, Seitz, Uecker
- Reps.** Pillich, R. Adams, Anielski, Antonio, Ashford, Baker, Barborak, Barnes, Beck, Bishoff, Blair, Blessing, Boose, Boyce, Brenner, Brown, Buchy, Budish, Burkley, Butler, Carney, Celebrezze, Cera, Conditt, Curtin, Damschroder, Derickson, Dovilla, Driehaus, Duffey, Fedor, Foley, Gerberry, Gonzales, Green, Grossman, Hackett, C. Hagan, Hall, Hayes, Heard, Henne, Hill, Hottinger, Huffman, Kunze, Letson, Maag, Mallory, McClain, Milkovich, O'Brien, Patmon, Patterson, Perales, Ramos, Reece, Retherford, Roegner, Rogers, Ruhl, Scherer, Slaby, Smith, Sprague, Stautberg, Stebelton, Stinziano, Strahorn, Terhar, Wachtmann, Winburn, Batchelder

Effective date: Emergency, July 11, 2013

ACT SUMMARY

- Prohibits under the offense of "criminal child enticement" a person, for any unlawful purpose other than, or in addition to, that proscribed by the preexisting general prohibition under that offense, from engaging in any activity described in that general prohibition. The preexisting general prohibition, unchanged by the act, prohibits a person, by any means and without privilege to do so, from knowingly soliciting, coaxing, enticing, or luring a child under 14 to accompany the person in any manner, when the person has no express or implied authority to engage in that conduct and is not a specified official.

CONTENT AND OPERATION

Criminal child enticement prohibitions

Formerly

R.C. 2905.05 sets forth two prohibitions under the offense of "criminal child enticement" that are unchanged by the act – a general prohibition in R.C. 2905.05(A) and a sex-related prohibition in R.C. 2905.05(B). Definitions of the terms in quotation marks

used in this part of the final analysis are set forth below in "**Definitions.**" The prohibitions are as follows:

(1) R.C. 2905.05(A) continues to prohibit a person, by any means and without "privilege" to do so, from knowingly soliciting, coaxing, enticing, or luring any child under 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:¹

(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" (see below), 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) R.C. 2905.05(B) continues to prohibit a person, with a "sexual motivation," from violating the general prohibition described above.²

Prior to the enactment of the act, four Ohio appellate courts considered the constitutionality of the general prohibition and have reached different conclusions, with three holding that it is unconstitutional and one holding that it is not unconstitutional. The Supreme Court has not decided the matter, but it has accepted an appeal to resolve the differences between appellate districts. The court decisions are summarized below in "**Court decisions.**"

Operation of the act

The act enacts a third prohibition under the offense of criminal child enticement. The new prohibition 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.³

The act does not amend the general prohibition or the sex-related prohibition under the offense. The act does not change the preexisting name of and penalties for the offense or the existing definitions of the terms in this part of the final analysis that are in

¹ R.C. 2905.05(A).

² R.C. 2905.05(B).

³ R.C. 2905.05(C).



quotation marks, all as described below in "**Preexisting criminal child enticement provisions, other than the prohibitions**," other than to expressly make the name and penalty apply with respect to all three prohibitions under the offense. As a result, the name, penalties, and definitions all apply to the new prohibition the act enacts.⁴

Preexisting criminal child enticement provisions, other than the prohibitions

Under preexisting law, unchanged by the act, 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 that the actor undertook the activity in a reasonable belief that it was necessary to preserve the health, safety, or welfare of the child.

Under preexisting law, unchanged by the act, a violation of either prohibition in R.C. 2905.05 is the offense of "criminal child enticement." The offense 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 17 at the time of the offense, it is a fifth degree felony.⁵

Definitions

As used in the offense of criminal child enticement, unchanged by the act:

"Law enforcement officer" means any of the following:⁶ (1) a sheriff, deputy sheriff, constable, township or joint police district police officer, marshal, deputy marshal, municipal police officer, metropolitan housing authority police force officer, or State Highway Patrol Trooper, (2) 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, (3) a mayor, in the mayor's capacity as chief conservator of the peace within the mayor's municipal corporation, (4) 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, (5) 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

⁴ R.C. 2905.05(A), (B), (C), (E), and (F).

⁵ Preexisting R.C. 2905.05(C) and (D), redesignated by the act as R.C. 2905.05(D) and (E).

⁶ R.C. 2901.01(A)(11), which applies throughout the Revised Code and is not in the act.



called, (6) 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, (7) a member of the state organized militia or the United States Armed Forces, lawfully called to duty to aid civil authorities in keeping the peace or protect against domestic violence, (8) a prosecuting attorney, assistant prosecuting attorney, secret service officer, or municipal prosecutor, (9) a veterans' home police officer, (10) a regional transit authority police force officer, (11) a port authority special police officer, (12) the House of Representatives Sergeant at Arms if he or she has arrest authority and an Assistant House of Representatives Sergeant at Arms, (13) the Senate Sergeant at Arms and an Assistant Senate Sergeant at Arms, or (14) a special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in federal law, and that is required to be under a security program and is governed by federal aviation security rules.

"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.⁷

"Sexual motivation" means a purpose to gratify the sexual needs or desires of the offender.⁸

"Vehicle" means everything on wheels or runners, including motorized bicycles, but does not mean "electric personal assistive mobility devices," 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.⁹ As used in this definition, "electric personal assistive mobility device" means a self-balancing two non-tandem wheeled device that is designed to transport only one person, has an electric propulsion system of an average of 750 watts, and when ridden on a paved level surface by an operator who weighs 170 pounds has a maximum speed of less than 20 miles per hour.¹⁰

⁷ R.C. 2901.01(A)(12), which applies throughout the Revised Code and is not in the act.

⁸ R.C. 2905.05(E), by reference to R.C. 2971.01, which is not in the act.

⁹ R.C. 2905.05(E), by reference to R.C. 4501.01(A), which is not in the act.

¹⁰ R.C. 4501.01(TT), not in the act.



"Vessel" includes every description of craft, including nondisplacement craft and seaplanes, designed to be used as a means of transportation on water.¹¹

Court decisions

Prior to the enactment of the act, three Ohio courts of appeals have held that the general prohibition under the offense of "criminal child enticement," set forth in R.C. 2905.05(A), was unconstitutionally overbroad in violation of the First Amendment to the United States Constitution.¹² Another held that a Cleveland ordinance patterned after R.C. 2905.05(A) was unconstitutionally overbroad in violation of the First Amendment.¹³ Those decisions did not consider the sex-related prohibition under the offense as set forth in R.C. 2905.05(B), but one of those appellate courts, in a separate decision rendered after its decision finding R.C. 2905.05(A) to be unconstitutional, upheld a conviction under R.C. 2905.05(B).¹⁴

A different Ohio court of appeals held that the general prohibition under the offense was not unconstitutionally vague or overbroad in violation of the First Amendment and that it provides reasonable notice of the conduct that it prohibits.¹⁵ This decision preceded all of the decisions referred to in the preceding paragraph.

The Ohio Supreme Court had not addressed the constitutionality of R.C. 2905.05(A), but in February 2013, it accepted an appeal of one of the cases referred to in the second preceding paragraph to resolve the conflict between that decision and the decision referred to in the immediately preceding paragraph, as to whether R.C. 2905.05(A) was unconstitutionally overbroad.¹⁶

¹¹ R.C. 2905.05(E), by reference to R.C. 1547.01, which is not in the act.

¹² See, e.g., *State v. Goode* (February 20, 2013), Summit App. C.A. No. 26320, 2013 Ohio App. LEXIS 488; *State v. Romage* (July 26, 2012), Franklin App. No. 11AP-822, 2012 Ohio App. LEXIS 2971, certification granted (Feb. 20, 2013), Supreme Court, 2013 Ohio LEXIS 465, discret. appeal allowed (Feb. 20, 2013), Supreme Court, 2013 Ohio LEXIS 511; *State v. Chapple* (March 14, 2008), Montgomery App. Case No. 22198, 2008 Ohio App. LEXIS 1026.

¹³ *Cleveland v. Cieslak* (August 13, 2009), Cuyahoga App. Case No. 92017, 2009 Ohio App. LEXIS 3432.

¹⁴ *State v. Brown* (Montgomery County, 2009), 183 Ohio App.3d 643.

¹⁵ *State v. Clark* (March 25, 2005), Hamilton App. Appeal No. C-040329, 2005 Ohio App. LEXIS 1265. Also prior decisions of that court upheld an earlier version of R.C. 2905.05 that was limited to enticement into a motor vehicle – see *State v. Long* (Hamilton County, 1989), 49 Ohio App.3d 1; *State v. Kroner* (Hamilton County, 1988), 49 Ohio App.3d 133.

¹⁶ *State v. Romage*, certification granted (Feb. 20, 2013), Supreme Court, 2013 Ohio LEXIS 465, discret. appeal allowed (Feb. 20, 2013), Supreme Court, 2013 Ohio LEXIS 511.



HISTORY

ACTION	DATE
Introduced	03-07-13
Reported, S. Criminal Justice	05-22-13
Passed Senate (30-2)	05-30-13
Reported, H. Judiciary	06-20-13
Passed House (97-0)	06-25-13
Senate concurred in House amendments (27-5)	06-27-13

13-sb64-130.docx/ks

