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H.B. 168*
136th General Assembly

Bill Analysis

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Version: As Reported by House Judiciary

Primary Sponsors: Reps. Williams and Brennan

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SUMMARY

- Requires that the offense of criminal child enticement is committed with a sexual motivation or an unlawful purpose other than a sexual motivation.
- Removes the affirmative defense for criminal child enticement that specifies 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.
- Specifies that if an offender is guilty of criminal child enticement and is also guilty of another offense under the Kidnapping and Extortion Law based on the same conduct and involving the same victim, the two offenses are allied offenses of similar import.
- Classifies criminal child enticement with an unlawful purpose other than a sexual motivation as a child-victim oriented offense.

DETAILED ANALYSIS

Criminal child enticement

Offense – under the bill

The bill modifies the offense of criminal child enticement by requiring that a person act with a sexual motivation or an unlawful purpose other than a sexual motivation. The bill prohibits a person from doing the following:¹

* This analysis was prepared before the report of the House Judiciary Committee appeared in the House Journal. Note that the legislative history may be incomplete.

¹ R.C. 2905.05(A).

- By any means and without privilege to do so, 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 or onto any vessel, whether or not the offender knows the age of the child, if either of the following apply:
 - The person acts with a sexual motivation;
 - The person acts with an unlawful purpose other than a sexual motivation.

Offense – under current law

Under current law, the offense of criminal child enticement prohibits a person from doing any of the following:²

1. By any means and without privilege to do so, 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 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 child's parent, guardian, or other legal custodian 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. With a sexual motivation, violating (1) above.
3. For any unlawful purpose other than, or in addition to, that proscribed by (1) above, engaging in any activity described in (1) above.

In *State v. Romage*, the Ohio Supreme Court held that (1) above was unconstitutionally overbroad. The court held that while the statute has an admirable purpose, which is to prevent child abductions or the commission of lewd acts with children, it cannot include what is constitutionally protected activity. Even though the state has a legitimate and compelling interest in protecting children from abduction and lewd acts, a statute intended to promote legitimate goals that can be regularly and improperly applied to prohibit protected expression and activity is constitutionally overbroad. The statute fails to require that the prohibited solicitation, coaxing, enticing, or luring occur with the intent to commit any unlawful act.³

² R.C. 2905.05(A) to (C).

³ *State v. Romage* (2013), 138 Ohio St.3d 390, 393-394.

Penalty

Under the bill, the penalty for criminal child enticement when the person acts with an unlawful purpose other than a sexual motivation is generally a first degree misdemeanor, but may be a fifth degree felony depending on the circumstances of the offense.⁴

The bill provides that the penalty for criminal child enticement when the person acts with a sexual motivation is generally a fifth degree felony but may be a fourth degree felony or third degree felony depending on the circumstances of the offense.⁵

Affirmative Defense

The bill removes the affirmative defense for the offense of criminal child enticement. Under current law, it is an affirmative defense to a charge of criminal child enticement 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.⁶

Allied offenses of similar import

The bill provides that the prosecution of a person for criminal child enticement does not preclude prosecution of that person under any other section of the Revised Code. One or more acts, a series of acts, or a course of behavior that can be prosecuted as criminal child enticement or under another section of the Revised Code may be prosecuted under the criminal child enticement section, the other section, or the criminal child enticement section and the other section. However, if the offender is convicted of or pleads guilty to criminal child enticement and a violation of another section in R.C. Chapter 2905 based on the same conduct and involving the same victim, the two offenses are allied offenses of similar import.⁷

Sex offender registration and notification (SORN) classifications

Under Ohio's SORN laws, there are two types of offenders who must comply with SORN: those who commit sexually oriented offenses and those who commit child-victim oriented offenses. Certain criminal violations or offenses are classified as sexually oriented offenses when the offense is either inherently sexual or involves a sexual motivation. Child-victim oriented offenses are specific offenses, with no sexual motivation, committed against a victim who is under 18 years of age and is not a child of the person who commits the violation. Those specific offenses include kidnapping, abduction, unlawful restraint, and any attempt, complicity, or conspiracy to commit any of these offenses.⁸

⁴ R.C. 2905.05(B)(1).

⁵ R.C. 2905.05(B)(2).

⁶ R.C. 2905.05(D).

⁷ R.C. 2905.05(C).

⁸ R.C. 2950.01.

The bill specifies that criminal child enticement with an unlawful purpose other than a sexual motivation is classified as a child-victim oriented offense.⁹ The bill retains the classification of criminal child enticement with a sexual motivation as a sexually oriented offense.¹⁰

Definitions

The bill uses the following continuing law definitions:

1. **“Sexual motivation”** means a purpose to gratify the sexual needs or desires of the offender.¹¹
2. **“Vehicle”** means everything on wheels or runners, including motorized bicycles, but does not mean electric personal assistive mobility devices, low-speed micromobility 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 discharge of its functions.¹²
3. **“Vessel”** includes every description of craft, including nondisplacement, multimodal craft, and submersibles, being used or capable of being used as a means of transportation on water.¹³

Technical changes

The bill makes necessary cross-reference changes.¹⁴

HISTORY

Action	Date
Introduced	03-12-25
Reported, H. Judiciary	---

ANHB0168RH-136/ts

⁹ R.C. 2950.01(C)(2).

¹⁰ R.C. 2950.01(A)(10).

¹¹ R.C. 2905.05(D)(1) and 2971.01(J), not in the bill.

¹² R.C. 2905.05(D)(2) and 4501.01(A), not in the bill.

¹³ R.C. 2905.05(D)(3) and 1546.01, not in the bill.

¹⁴ R.C. 2950.01(A)(10), (C)(2), and (E)(1)(e).