

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	Case Nos. 2012-1958 and 2012-2042
	:	
Plaintiff-Appellant,	:	On Appeal from the
	:	Franklin County Court of Appeals
vs.	:	Tenth Appellate District
	:	
JASON ROMAGE,	:	C.A. Case No. 11 AP-122
	:	M.C. Case No. 2010 CRB 023662
Defendant-Appellee.	:	

**MERIT BRIEF OF AMICUS CURIAE, OFFICE OF THE OHIO PUBLIC DEFENDER,
IN SUPPORT OF JASON ROMAGE**

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INTRODUCTION

The court below—as have other courts of appeals—held Ohio’s criminal child enticement statute, R.C. 2905.05(A), unconstitutionally overbroad. The statute prohibits verbal and non-verbal communications to persuade a child under the age of 14 to accompany the communicator *in any manner*. In doing so, it criminalizes lawful conduct and constitutionally-protected speech and associations. Quite simply, it deprives Ohio’s citizens of their most basic speech and association rights as a consequence of innocent behavior. Accordingly, although it is well-intentioned and aimed at a pressing societal concern and substantial government interest, the statute is not a facially valid manner restriction on speech. The statute does not allow an alternate means of communicating innocent information and conducting lawful activities. Consequently, the regulation is substantially broader than necessary to achieve the government’s legitimate interest in protecting children. It is, therefore, unconstitutional on its face. As such, this case should be dismissed as having been improvidently accepted or this Court should affirm the decision below.

STATEMENT OF THE CASE AND FACTS

Jason Romage was moving multiple items from his car to his apartment. *State v. Romage*, 10th Dist. No. 11AP-822, 2012-Ohio-3381, ¶ 2. He asked two boys who were playing near his car—both younger than 14 years old—if they would help him, and offered to pay them a small amount of money to do so. Tr. 8. The boys declined. *Id.* Mr. Romage moved the items himself. *Id.* As a result, Mr. Romage was charged with criminal child enticement in violation of R.C. 2905.05(A). *Romage* at ¶ 2.

Mr. Romage pleaded not guilty and moved the court to dismiss the complaint. *Id.* at ¶ 2-3. The court dismissed the complaint, holding R.C. 2905.05(A) to be unconstitutionally overbroad. *Id.* at ¶ 3. The State appealed. *Id.* at ¶ 4. The court of appeals affirmed the trial court. *Id.* at ¶ 10, 14. This Court accepted the State's discretionary appeal and the court of appeals' certified question. (February 20, 2013 Entry [Corrected]).

**STATEMENT OF INTEREST OF AMICUS CURIAE
OFFICE OF THE OHIO PUBLIC DEFENDER**

The Office of the Ohio Public Defender (OPD) is a state agency designed to represent indigent criminal defendants, coordinate criminal defense efforts throughout Ohio, promote the proper administration of criminal justice, ensure equal treatment under the law, and protect the individual rights guaranteed by the state and federal constitutions. Accordingly, the OPD has an interest in ensuring the constitutionality of Ohio's criminal-offense statutes.

ARGUMENT

CERTIFIED QUESTION AND STATE OF OHIO'S PROPOSITION OF LAW

CERTIFIED QUESTION:

Is R.C. 2905.05(A) unconstitutionally overbroad?

STATE'S PROPOSITION OF LAW:

Revised Code 2905.05(A) is not overbroad in its entirety because it is susceptible to a limiting instruction or impartial invalidation.

This case should be dismissed as having been improvidently accepted or this Court should affirm the decision below. The court's decision, which held R.C. 2905.05(A) unconstitutionally overbroad, is correct. Criminal statutes that "make unlawful a substantial amount of constitutionally-protected conduct may be held facially invalid even if they also have a legitimate application." *Houston v. Hill*, 482 U.S. 451, 459, 107 S.Ct. 2502, 96 L.Ed.2d 398 (1987), citing *Kolender v. Lawson*, 461 U.S. 352, 359, 103 S.Ct. 1855, 75 L.Ed.2d 903 (1983), fn. 8. And where a statute imposes criminal penalties, the standard of certainty is higher. *Kolender* at 359, fn. 8, citing *Winters v. New York*, 333 U.S. 507, 515, 68 S.Ct. 665, 92 L.Ed. 840 (1948).

As lower courts have held, R.C. 2905.05(A) makes innumerable legal, appropriate, and constitutionally-protected interactions criminal. See *State v. Goode*, 9th Dist. No. 26320, 2013-Ohio-556, ¶ 8, 12; *Romage* at ¶ 10, 14; *State v. Chapple*, 175 Ohio App.3d 658, 2008-Ohio-1157, 888 N.E.2d 1121, ¶ 16-18 (2d Dist.), *discretionary appeal denied*, 119 Ohio St.3d 1412, 2008-Ohio-3880, 891 N.E.2d 771; *Cleveland v. Cieslak*, 8th Dist. No. 92017, 2009-Ohio-4035, ¶ 14-16 (analyzing a comparable municipal ordinance); see also *State v. Cunningham*, 178 Ohio App.3d 558, 2008-Ohio-5164, 899 N.E.2d 171, ¶ 9

(2d Dist.) (applying *Chapple*). And it reaches a substantial amount of constitutionally-protected speech and associations that do not promote the government's interest in protecting children. *Goode* at ¶ 8, 12; *Romage* at ¶ 10, 14; *Chapple* at ¶ 16-18. Further, it fails to permit an alternate means of communicating innocent information or conducting lawful activities. *Id.* Accordingly, the statute is unconstitutionally overbroad. See *Akron v. Rowland*, 67 Ohio St.3d 374, 387, 618 N.E.2d 138 (1993), citing *Hill* at 458-459.

I. This Court's analysis in *Akron v. Rowland* demands the result below stand.

This Court has previously faced the overbreadth issue presented by R.C. 2905.05(A) in a different context, but the same analysis applies here. *Rowland* at 379-389. In *Rowland*, this Court held an Akron ordinance that prohibited one from loitering while “manifesting the purpose to engage in drug-related activity contrary to any of the provisions of R.C. Chapter 2925” to be unconstitutionally vague and overbroad. *Id.* at 379. The ordinance was a prophylactic measure aimed at solving a real societal problem—drugs—and allowed police to make an arrest before any crime occurred. *Id.* at 386. But it criminalized lawful conduct. *Id.* at 379-380. And it did not allow speech and association rights the necessary “breathing space” they are constitutionally assured. *Id.* at 386-387, quoting *Natl. Assn. for the Advancement of Colored People v. Button*, 371 U.S. 415, 433, 83 S.Ct. 328, 9 L.Ed.2d 405 (1963). Those failures made the ordinance unconstitutionally overbroad because the “[e]nforcement of the ordinance would deprive ordinary people of or discourage them from exercising their most basic speech, associational, and privacy rights simply because of their status, friends, neighborhood,

appearance, or innocent behavior.” *Rowland* at 388-389; *see also Grayned v. Rockford*, 408 U.S. 104, 114-115, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972). And this Court refused to rewrite the ordinance. *Rowland* at 380, citing *State ex rel. Defiance Spark Plug Corp. v. Brown*, 121 Ohio St. 329, 331-332, 168 N.E. 842 (1929).

Ohio Revised Code 2905.05(A) is also a prophylactic measure aimed at solving a real societal problem—the kidnapping and exploitation of children—and allows police to make an arrest before any crime has occurred. *See* Merit Brief of Appellant, State of Ohio at 2. It too criminalizes lawful conduct. *Goode* at ¶ 7-8; *Romage* at ¶ 10; *Chapple* at ¶ 16-18. And as demonstrated below, it does not provide speech and association rights “the breathing space” they are constitutionally guaranteed. *Goode* at ¶ 7, quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 611-612, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973). Thus, like the Akron ordinance, R.C. 2905.05(A) “deprive[s] ordinary people of or discourage[s] them from exercising their most basic speech [and] associational . . . rights simply because of . . . innocent behavior.” *Rowland* at 388-389; *see also Goode* at ¶ 8-10, 12; *Romage* at ¶ 10, 14; *Chapple* at ¶ 16-18. This effect is unavoidable because R.C. 2905.05(A) covers the speech and conduct of *all persons*, and prohibits accompanying in *any manner*. *See Chapple* at ¶ 18 fn. 3. Accordingly, the only way to make R.C. 2905.05(A) constitutional is to rewrite the statute, but this Court does not rewrite statutes. *See Rowland* at 380, citing *State ex rel. Defiance Spark Plug Corp.* at 331-332.

II. As written, R.C. 2905.05(A) criminalizes lawful conduct and constitutionally-protected speech and association rights.

The statute’s facial invalidity becomes obvious by applying it to common,

appropriate, innocent, and often genuinely altruistic scenarios. The examples are vast and the Second District Court of Appeals identified many of them. *Chapple* at ¶ 17-18 (a senior citizen offering a neighborhood child under 14 years old money to help do household chores or escort him or her across the street for safety reasons; a 13-year-old asking his or her 13-year-old acquaintance to go for a bike ride).

There are immeasurable others. To identify a few:

- A youth sports coach offering to drive a member of his or her team who is under 14 years old home to retrieve a forgotten piece of equipment for practice.
- A parent of a child participant at a community facility open to children offering to drive another unknown participant under 14 years old home from the facility so that child does not have to walk.
- A parent, while at a park with his or her young child, asking another child—one who is slightly older and at the park alone, but is under 14 years old—to accompany them across the park to another playground that has different play equipment.

Each of these scenarios are criminal under R.C. 2905.05(A). None of the accompanying actions would qualify as privileged, none would inherently carry the implied permission of the child's parent, and none equate to a response to a bona fide emergency. *See* R.C. 2905.05(A)(1) and (2); *see also* R.C. 2905.05(C).

In the youth sports example, there may be implied permission for the child to accompany the coach around the practice field, but that implied permission would not encompass a ride to retrieve forgotten equipment. In the community-facility instance, the parent would not know the child or the child's parents, so there could be no implied permission. And parents who allow their children to attend a park alone do not give implied permission to strangers to escort their children from one part of the park to

another. Although none of the actions described meet the exceptions detailed in R.C. 2905.05(A)(1) and (2) or R.C. 2905.05(C), they all constitute genuinely innocent conduct within a respectful society. Simply because all members of society are not respectful does not mean that respectful speech and associations can be made criminal without adequate restraints. See *Rowland* at 388-389; see also *Goode* at ¶ 9 (“These are very basic social interactions going to the very idea of speech and association.”).

Freedom of speech and association are “fundamental rights which are safeguarded by the due process clause of the Fourteenth Amendment of the Federal Constitution.” (Citations omitted.) *De Jonge v. Oregon*, 299 U.S. 353, 364, 57 S.Ct 255, 81 L.Ed. 278 (1937); see also *Rowland* at 388-389. Unwarranted government denial of those rights is a violation of the “fundamental principles of liberty and justice which lie at the base of all civil and political institutions....” (Citations omitted.) *De Jonge* at 364. Accordingly, a State cannot seize upon the mere participation in lawful public discussion and association as the basis for a criminal charge. *Id.* at 365. To do so would be to convict upon a basis that offends “a sense of justice.” See *Rochin v. California*, 342 U.S. 165, 173, 72 S.Ct. 205, 96 L.Ed. 183 (1952), citing *Brown v. Mississippi*, 297 U.S. 278, 285-286, 56 S.Ct. 461, 80 L.Ed. 682 (1936).

Consequently, the State’s amici is wrong when it asserts that Ohio can criminalize lawful speech that results in lawful accompanying by a child under 14 years of age. Brief of Amici Curiae Ohio Prosecuting Attorneys Association and Franklin County Prosecutor Ron O’Brien at 13-15. Irrespective of the lack of a right to accompany, there is a fundamental right to *lawful* speech and associations. *De Jonge* at

365. Accompanying that results in only lawful conduct cannot be criminalized. *Goode* at ¶ 7-8; *see also De Jonge* at 365. That fundamental truth is not changed by the age of one of the participants so long as the speech and association are lawful. *Goode* at ¶ 8, 12.

Here, all of the scenarios identified demonstrate that R.C. 2905.05(A) criminalizes a person's associations, mere presence, speech, and otherwise innocent behavior. *See Rowland* at 387. As established above and previously noted by this Court, "[t]he case law is legion that people cannot be punished because of . . . the company they keep, or their presence in a public place." (Citations omitted.) *Id.* The examples are common, everyday experiences that have occurred in this country for centuries. They are not "worst-case scenarios." Thus, because R.C. 2905.05(A) "prohibits a wide variety of speech and association far beyond the statute's purpose of safeguarding children," it is unconstitutionally overbroad. *Goode* at ¶ 8; *see also id.* at 12; *Romage* at ¶ 10, 14; *Chapple* at ¶ 16-18.

III. The statute is facially overbroad because it is not narrowly tailored to allow an alternate means of communicating innocent information.

It is undeniable that protecting children is a legitimate, substantial government interest. *Goode* at ¶ 7. And speech and associations can be restricted to achieve that interest. *Heffron v. Int'l Soc'y for Krishna Consciousness, Inc.*, 452 U.S. 640, 647, 101 S.Ct. 2559, 69 L.Ed.2d 298 (1981). But, "[t]he needs of law enforcement stand in constant tension with the Constitution's protections of the individual against certain exercises of official power." *Almeida-Sanchez v. United States*, 413 U.S. 266, 273, 93 S.Ct. 2535, 37 L.Ed.2d 596 (1973). "It is precisely the predictability of these pressures that counsels a

resolute loyalty to constitutional safeguards.” *Id.*

Thus, to qualify as a valid manner restriction on speech, a regulation must be content-neutral and narrowly tailored to (1) promote “a substantial government interest that would be achieved less effectively absent the regulation,” and (2) not be “substantially broader than necessary to achieve the government’s interest.” *See Ward v. Rock Against Racism*, 491 U.S. 781, 799-800, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989).

Ohio’s criminal child enticement statute is not narrowly tailored to avoid being “substantially broader than necessary to achieve the government’s interest.” *Id.* It does not allow for an alternate means of communicating innocent information that would result in the child accompanying the communicator legally. *See Ward* at 799-800; *Goode* at ¶ 8, 12; *Romage* at ¶ 10, 14; *Chapple* at ¶ 16-18. As such, it reaches a substantial amount of speech and associations that do not promote the government’s interest in protecting children. *Id.*

Florida’s comparable statute reveals R.C. 2905.05(A)’s flaw. It requires an illicit intent, prohibiting a person from luring a child “into a structure, dwelling, or conveyance for other than a lawful purpose....” Fla.Stat. Ann. 787.025(2). Florida’s high court interpreted “other than a lawful purpose” to mean “with intent to violate Florida law by committing a crime.” *State v. Brake*, 796 So.2d 522, 529 (Fla.2011). Accordingly, “even beyond the limiting language regarding luring a child ‘into a structure, dwelling or conveyance[,]’ the Florida statute further narrows its scope to exclude . . . innocent scenarios” *Goode* at ¶ 8.

But R.C. 2905.05(A) is not narrowly tailored so as to achieve that interest without

criminalizing innocent speech and associations. *Id.* Instead, R.C. 2905.05(A) criminalizes each time a person convinces a child under 14 years old to accompany him or her *to any place and in any manner*. See R.C. 2905.05(A). Contrary to the arguments presented by the State's amici, the exceptions do not save R.C. 2905.05(A). Brief of Amici Curiae Ohio Prosecuting Attorneys Association and Franklin County Prosecutor Ron O'Brien at 3-4. Although they allow "breathing space" for special circumstances, that does not amount to narrow tailoring. Patently, the exceptions do not provide the necessary space for lawful, common, everyday speech and associations. *Goode* at ¶ 9.

Further, the statute cannot be saved through selective enforcement. *Id.* at ¶ 10. Such an approach trades an unconstitutionally overbroad statute for an unconstitutionally vague one. *Id.*, citing *Kolender* at 357-358, and *Papachristou v. Jacksonville*, 405 U.S. 156, 168-170, 92 S.Ct. 839, 31 L.Ed.2d 110 (1972).

Finally, contrary to the State's assertion, limiting the statute to situations involving more than "mere asking" or severing the word "solicit" from the statute will not make the statute constitutional. Merit Brief of Appellant, State of Ohio at 5-11. The elderly person negotiating with a child under 14 years old to help with chores is more than mere asking and constitutes coaxing, enticing, or luring. See *Chapple* at ¶ 17. So too is a student under 14 years old asking a classmate to a dance with the promise that dinner and flowers will be included before the dance. Further, two of the examples above quickly become more than mere asking and qualify as coaxing, enticing, or luring: the parent offers to buy the child ice cream on the drive home from the community facility because he or she was planning to get his or her own child ice

cream; or, in the park scenario, the parent offers the child a slice of the pizza that he or she had brought to the park for lunch. All of these examples demonstrate “induce[ment] with a hint of reward” making them more than “mere asking,” and qualify them as coaxing, enticing, or luring. *See* Merit Brief of Appellant, State of Ohio at 7. They also illustrate that the statute’s criminalization of lawful conduct is constitutionally fatal. Neither a restricted interpretation of “solicit” nor the severance of “solicit” cure the statute’s deficiencies.

IV. A legislative fix is the only option; an attempt has been introduced.

The only way to make R.C. 2905.05(A) constitutional is through the legislature. An attempt has been introduced in both the House and the Senate. They are identical. The proposed fix is to require the communicator to have “an unlawful purpose” in his or her attempt to solicit, coax, entice, or lure the child under 14 years old. *See* App. A-1, 2013 H.B. No. 122; App. A-3, 2013 S.B. No. 64. Such a change would make R.C. 2905.05(A) similar to Florida’s statute and more compliant with the constitutional mandates previously described. *See* Fla.Stat.Ann. 787.025(2); Sections I, II, and III, above.

CONCLUSION

At bottom, the current version of R.C. 2905.05(A) does not survive constitutional scrutiny. It criminalizes lawful conduct and constitutionally-protected speech and associations, reaches a substantial amount of speech and associations that do not promote the government’s interest in protecting children, and does not allow an alternate means of communicating innocent information and conducting lawful

activities. *Goode* at ¶ 8, 12; *Romage* at ¶ 10, 14; *Chapple* at ¶ 16-18; see also *Rowland* at 388-389; *Kolender* at 359, fn. 8; *Ward* at 799-800. The statute is unconstitutionally overbroad. *Id.* Consequently, this case should be dismissed as having been improvidently accepted. Alternatively, this Court should affirm the decision below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing **Merit Brief of Amicus Curiae Office of the Ohio Public Defender in Support of Jason Romage** was forwarded by regular U.S. Mail, postage prepaid to the attorneys listed below on this 20th day of May, 2013.

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OFFICE OF THE OHIO PUBLIC DEFENDER

As Introduced

130th General Assembly
Regular Session
2013-2014

H. B. No. 122

Representative Kunze

—
A BILL

To amend section 2905.05 of the Revised Code to
require as an element of the offense of criminal
child enticement that the offender solicit, coax,
entice, or lure the child for an unlawful purpose
and to otherwise modify the offense.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 2905.05 of the Revised Code be
amended to read as follows:

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Sec. 2905.05. (A) No person, by any means ~~and without~~
~~privilege to do so~~, shall knowingly and for an unlawful purpose
solicit, coax, entice, or lure any child under fourteen 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:~~

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~~(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.~~

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~~(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~~

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~~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.~~

(B) No person, with a sexual motivation, shall violate
division (A) of this section.

(C) It is an affirmative defense to a charge under division
(A) of this section 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.

(D) Whoever violates this section is guilty of criminal child
enticement, a misdemeanor of the first degree. If the offender
previously has been convicted of a violation of this section,
section 2907.02 or 2907.03 or former section 2907.12 of the
Revised Code, or section 2905.01 or 2907.05 of the Revised Code
when the victim of that prior offense was under seventeen years of
age at the time of the offense, criminal child enticement is a
felony of the fifth degree.

(E) As used in this section:

(1) "Sexual motivation" has the same meaning as in section
2971.01 of the Revised Code.

(2) "Vehicle" has the same meaning as in section 4501.01 of
the Revised Code.

(3) "Vessel" has the same meaning as in section 1547.01 of
the Revised Code.

Section 2. That existing section 2905.05 of the Revised Code
is hereby repealed.

As Introduced

130th General Assembly
Regular Session
2013-2014

S. B. No. 64

Senators Beagle, Manning

Cosponsors: Senators Balderson, Burke, Faber, Hughes, Jones, Lehner,
Obhof, Peterson, Schaffer, Widener, LaRose

—
A B I L L

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the age of the child, ~~if both of the following apply:~~

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~~(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.~~

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~~(2) The actor is not a law enforcement officer, medic,~~
~~firefighter, or other person who regularly provides emergency~~

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~~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.~~

(B) No person, with a sexual motivation, shall violate
division (A) of this section.

(C) It is an affirmative defense to a charge under division
(A) of this section 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.

(D) Whoever violates this section is guilty of criminal child
enticement, a misdemeanor of the first degree. If the offender
previously has been convicted of a violation of this section,
section 2907.02 or 2907.03 or former section 2907.12 of the
Revised Code, or section 2905.01 or 2907.05 of the Revised Code
when the victim of that prior offense was under seventeen years of
age at the time of the offense, criminal child enticement is a
felony of the fifth degree.

(E) As used in this section:

(1) "Sexual motivation" has the same meaning as in section
2971.01 of the Revised Code.

(2) "Vehicle" has the same meaning as in section 4501.01 of
the Revised Code.

(3) "Vessel" has the same meaning as in section 1547.01 of
the Revised Code.

Section 2. That existing section 2905.05 of the Revised Code
is hereby repealed.

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Current through Legislation passed by the 130th Ohio General Assembly
 and filed with the Secretary of State through File 6
 *** Annotations current through November 9, 2012 ***

TITLE 29. CRIMES -- PROCEDURE
 CHAPTER 2905. KIDNAPPING AND EXTORTION
 KIDNAPPING AND RELATED OFFENSES

ORC Ann. 2905.05 (2013)

§ 2905.05. Criminal child enticement

(A) No person, by any means and without privilege to do so, shall knowingly solicit, coax, entice, or lure any child under fourteen 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:

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

(B) No person, with a sexual motivation, shall violate division (A) of this section.

(C) It is an affirmative defense to a charge under division (A) of this section 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.

(D) Whoever violates this section is guilty of criminal child enticement, a misdemeanor of the first degree. If the offender previously has been convicted of a violation of this section, section 2907.02 or 2907.03 or former *section 2907.12 of the Revised Code*, or *section 2905.01 or 2907.05 of the Revised Code* when the victim of that prior offense was under seventeen years of age at the time of the offense, criminal child enticement is a felony of the fifth degree.

(E) As used in this section:

(1) "Sexual motivation" has the same meaning as in *section 2971.01 of the Revised Code*.

- (2) "Vehicle" has the same meaning as in *section 4501.01 of the Revised Code*.
- (3) "Vessel" has the same meaning as in *section 1547.01 of the Revised Code*.

HISTORY:

140 v S 321 (Eff 4-9-85); 146 v S 2 (Eff 7-1-96); 148 v S 312. Eff 4-9-2001; 150 v S 160, § 1, eff. 4-11-05; 152 v S 10, § 1, eff. 1-1-08.

AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim or the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

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*** Statutes and Constitution are updated through the 2012 Regular Session and 2012 Special Session B. ***

*** Annotations are current through April 16, 2013 ***

TITLE 46. CRIMES (Chs. 775-896)
 CHAPTER 787. KIDNAPPING; FALSE IMPRISONMENT; LURING OR ENTICING A CHILD; CUSTODY OFFENSES

Fla. Stat. § 787.025 (2012)

§ 787.025. Luring or enticing a child

(1) As used in this section, the term:

(a) "Structure" means a building of any kind, either temporary or permanent, which has a roof over it, together with the curtilage thereof.

(b) "Dwelling" means a building or conveyance of any kind, either temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people lodging together therein at night, together with the curtilage thereof.

(c) "Conveyance" means any motor vehicle, ship, vessel, railroad car, trailer, aircraft, or sleeping car.

(d) "Convicted" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

(2) (a) A person 18 years of age or older who intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person 18 years of age or older who, having been previously convicted of a violation of paragraph (a), intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A person 18 years of age or older who, having been previously convicted of a violation of chapter 794, s. 800.04, or s. 847.0135(5), or a violation of a similar law of another jurisdiction, intentionally lures or entices, or attempts to lure or entice, a child under the age of 12 into a structure, dwelling, or conveyance for other than a lawful purpose commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) It is an affirmative defense to a prosecution under this section that:

(a) The person reasonably believed that his or her action was necessary to prevent the child from being seriously injured.

(b) The person lured or enticed, or attempted to lure or entice, the child under the age of 12 into a structure, dwelling, or conveyance for a lawful purpose.

(c) The person's actions were reasonable under the circumstances and the defendant did not have any intent to harm the health, safety, or welfare of the child.

HISTORY: S. 1, ch. 95-228; s. 8, ch. 99-201; s. 3, ch. 2000-246; s. 1, ch. 2006-299, eff. July 1, 2006; s. 20, ch. 2008-172, eff. Oct. 1, 2008.