



# Judicial Impact Statement

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## HB 374 – Child enticement

HB 374

Reps. Duffey and Cupp

### Title Information

To amend sections 2905.05 and 2950.01 of the Revised Code to create additional criminal prohibitions within the offense of criminal child enticement and to classify criminal child enticement as a tier I sex offense when committed by a registered sex offender.

### Background

In 2014, the Ohio Supreme Court found portions of Ohio's child-enticement statutes to be unconstitutional. The current statute provides that "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" if the person does not have the permission of the child's parents, and the person is not a law enforcement officer or other person acting in some lawful capacity. R.C. 2905.05(A). The Court in *State v. Romage* (2014-Ohio-783) found this prohibition unconstitutionally overbroad, in that it sweeps within its prohibitions a significant amount of constitutionally protected activity. "Even though a 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 unconstitutionally overbroad." *Romage* at ¶ 10, citing *Houston v. Hill*, 482 U.S. 451 (1987). In 2017, a Franklin County man was arrested and charged with child enticement, but those charges were ultimately dismissed in light of the *Romage* holding. H.B. 374 was introduced in response to that incident.

### Judicial Impact

The Court in *Romage* notes that without a requirement that the person engage in the conduct with some criminal intent, the statute is not narrowly tailored to achieve the state's interest in protecting children. For the same reason, HB 374 as introduced would very likely be unconstitutional under *Romage*. First, it leaves intact the very language that the Court declared unconstitutional (R.C. 2905.05(A)). Additionally, while the new language in the bill would apply to SORN registrants and people who do not have a prior relationship with the child, the new provisions still mirror the problem that *Romage* identified: prohibiting a person from asking a child to accompany the person in any manner and for any reason, no matter how innocent and innocuous, and regardless of any criminal intent.

**Conclusion**

In order to comply with the holding in *Romage* and to withstand a similar constitutional challenge, we would suggest the bill require that the solicitation, coaxing, enticing, or luring occur “with the intent to commit any unlawful act,” or “for any unlawful purpose,” which is already in existing law at R.C. 2505.05 (C). This change would meet the constitutional requirements established in *Romage*, and would not sweep up individuals engaged in innocent, legal conduct. Any revision to R.C. 2905.05 that does not require the person act with criminal intent, or an unlawful purpose, would likely be unconstitutional under *Romage*.