Virginia State Crime Commission

Soliciting a Minor to Enter a Vehicle

2011

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Executive Summary

During the 2011 Regular Session of the Virginia General Assembly, Delegate Robert Bell introduced House Bill 2396, which proposed to create a new criminal statute, making it a crime for an adult to entice a minor into a motor vehicle. A letter was sent from the Senate Courts of Justice Committee, asking the Crime Commission to review the subject matter of the bill.

In most cases, when an adult with an unlawful intent solicits a child to accompany him in a motor vehicle, he will be subject to a successful prosecution, either for the crime of indecent liberties, or the crime of attempted abduction. However, there are some cases where such a prosecution could be very difficult—the adult has not made any overt sexual suggestions to the child, and the offer of the ride, while extremely suspicious under the circumstances, might not be sufficient to prove beyond a reasonable doubt that the offer was, in reality, an attempted abduction. In such cases, having a strict liability crime for this type of behavior would be very helpful to prosecutors; the mere offer of the ride, without any further evidence, would be sufficient for a criminal conviction.

Currently, six states make it a strict liability crime for an adult to offer a ride to a minor. In these states, it is either an affirmative defense, or not made illegal by the statute, for an adult to offer a ride to a minor under circumstances where it appears the safety or well-being of the minor are at risk.

The Crime Commission considered the advisability of creating a similar, strict liability crime in Virginia. After deliberating, the Commission declined to endorse such legislation.

Background

During the 2011 Regular Session of the Virginia General Assembly, Delegate Robert Bell introduced House Bill 2396 (HB 2396), which proposed to create a new criminal statute, making it a crime for an adult to entice a minor into a motor vehicle.[1] The bill was referred to the Senate Courts of Justice Committee, where it was passed by indefinitely; a letter was sent to the Crime Commission asking for a review of the subject matter of the bill. The proposed statute, as passed by the House of Delegates, was as follows:

§ 18.2-47.1. Unlawful solicitation of a child by an adult; penalty.

> *Any adult who, by an offer of something of value or by misrepresentation of his identity, allures, persuades, invites or entices a minor [who is three or more years younger than the adult] to enter a motor vehicle is guilty of a Class 1 misdemeanor.*
>
> *There shall exist a rebuttable presumption that any of the following persons who allure, persuade, invite or entice a minor to enter a motor vehicle are not in violation of this section: a law-enforcement officer in the performance of his duties, the minor's family or household member as defined in § 16.1-228, a guardian of the minor, or any person who has permission, granted by an adult family or household member of the minor or the guardian of the minor, to transport the minor.*

The intent of the statute is to make it a crime for predatory adults to invite or lure minors into motor vehicles, under circumstances where no additional crime, or criminal intent, can be shown. An example of the type of behavior this statute is designed to prohibit would be a strange adult inviting a young child into his car to receive some candy, or to take a trip to a distant amusement park.[2]

In Virginia, it is already a crime, indecent liberties, for an adult to "entice, allure, persuade, or invite any…child [under the age of 15] to enter any vehicle, room, house, or other place, for any [sexual purpose]…."[3] The proposed new statute would therefore be applicable in situations where a sexual intent on the part of the adult could not be directly proven or inferred. The enactment of a statute that does not have an intent requirement, though, creates the possibility that innocent conduct, or the actions of a good Samaritan trying to help a lost child seen by the side of a road, could result in a criminal prosecution.

Analysis

REVIEW OF OTHER STATES' STATUTES

A review of other states' statutes found that most states have enacted legislation similar to the existing crime of indecent liberties in Virginia. These statutes make it a crime for an adult to invite or lure a child into a motor vehicle, with the intent of committing a sexual act or other crime. A small number of states, though, have created statutes that are similar to HB 2396—they create a crime that focuses on the act of invitation, by itself, without any additional elements of sexual or criminal intent. These statutes can be classified into three categories: a criminal intent can be inferred from the fact that an invitation for a ride was given; the invitation for a ride is a crime, in and of itself; and, the offer of a ride is made the equivalent of attempted abduction.

A. Statutes where a criminal intent can be inferred

Two states, Illinois and Florida, had statutes where the offer of a ride allowed an inference to be made that the offer was for an unlawful purpose. In both states, though,

a state appellate court ruled that this statutory presumption was unconstitutional. The Illinois and Florida statutes are enforceable, but without the statutory inference. Illinois' statute reads:

> A person commits the offense of child abduction when he or she…intentionally lures or attempts to lure a child under the age of 16 into a motor vehicle…without the consent of the child's parent or lawful custodian for other than a lawful purpose. [T]he luring or attempted luring…without the consent of the child's parent or lawful custodian is prima facie evidence of other than a lawful purpose.[4]

The Illinois Supreme Court held that the prima facie presumption in this statute is facially unconstitutional, though the presumption was severable, and thus, the statute could still be used to prosecute those who lure children into motor vehicles for an unlawful purpose.[5] The Illinois legislature has not modified the statute since the ruling; thus it continues to contain the unconstitutional provision.

Florida's statute had a similar prima facie presumption that lack of parental consent equated to an unlawful purpose whenever a sex offender lured a child, under the age of 12, into a dwelling or car. When the Florida Supreme Court ruled that this prima facie presumption was unconstitutional,[6] the Florida legislature subsequently modified the statute. It currently reads:

> 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…[7]

Essentially, as a result of court rulings, the two states that had statutes with prima facie inferences that offering a ride to a minor was for an unlawful purpose, absent parental permission, were forced to abandon this approach to criminalizing predatory behavior. Illinois and Florida now have statutes that, at least in application, require a showing that the defendant acted with a bad intent in mind, which is what Virginia currently does with its indecent liberties statute.

B. <u>Statutes where the invitation for a ride is a strict liability crime</u>

Three states were identified that make it a strict liability crime for an adult to offer a juvenile a ride in a motor vehicle: Pennsylvania, Nebraska, and Washington. In all three states, the crime is committed when the invitation is made, and no additional motive or intent on the part of the adult must be proven for a conviction. One other state, Ohio, was identified as having had such a statute; however, the statute was declared unconstitutional, and has since been amended to require that a bad intent on the part of the defendant be shown.

Pennsylvania's statute makes it a crime, in and of itself, to lure a minor into a motor vehicle or offer a minor a ride. No additional motive or intent must be proven:

> Unless the circumstances reasonably indicate that the child is in need of assistance, a person who lures or attempts to lure a child into a motor vehicle or structure without the consent of the child's parent or guardian commits a misdemeanor….It shall be an affirmative defense…that the person lured or attempted to lure the child…for a lawful purpose.[8]

The Pennsylvania Superior Court has upheld this statute and affirmed that no ill intent on the part of the adult is required for a conviction.[9]

Nebraska has a statute that is similar, though with an affirmative defense component that is defined in more detail:

> (1)(a) No person, by any means and without privilege to do so, shall knowingly solicit, coax, entice, or lure or attempt to solicit, coax entice, or lure any child under the age of fourteen years to enter into any vehicle, whether or not the person knows the age of the child.
>
> (2) It is an affirmative defense to a charge under this section that:
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> (a) The person had the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity;
>
> (b)(i) The person is a law enforcement officer, emergency services provider…firefighter…the operator of a bookmobile or other such vehicle operated by the state or a political subdivision and used for informing, educating, organizing, or transporting children, is a paid employee of, or a volunteer for, a nonprofit or religious organization which provides activities for children, or is an employee or agent of or a volunteer acting under the direction of any board of education and (ii) the person listed in subdivision (2)(b)(i) of this section was, at the time the person undertook the activity, acting within the scope of his or her lawful duties in that capacity; or
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> (c) The person undertook the activity in response to a bona fide emergency situation or the person undertook the activity in response to a reasonable belief that it was necessary to preserve the health, safety, or welfare of the child.[10]

There have not been any appellate court rulings, to date, regarding this statute.

Washington state has a luring statute that is similar to Pennsylvania's:

> A person commits the crime of luring if the person:

> (1)(a) Order, lure, or attempts to lure a minor or a person with a developmental disability into any area or structure that is obscured from or inaccessible to the public or into a motor vehicle;
>
> (b) Does not have the consent of the minor's parent or guardian or of the guardian of the person with a developmental disability; and
>
> (c) Is unknown to the child or developmentally disabled person.
>
> (2) It is a defense to luring, which the defendant must prove by a preponderance of the evidence, that the defendant's actions were reasonable under the circumstances and the defendant did not have any intent to harm the health, safety, or welfare of the minor or the person with the developmental disability.[11]

The Washington Court of Appeals has upheld this statute and specifically ruled that having a bad or sexual intent is not an element of the crime.[12]

Ohio had a luring statute that, until 2007, did not require any specific intent on the part of the defendant:

> 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) 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.[13]

After the statute was modified in 2007 to include a section adding a "sexual motivation" to the crime,[14] one of Ohio's Courts of Appeals held that the previous version of the statute, without the "sexual motivation" section, was unconstitutional.[15] The Court

focused upon the fact that the statute criminalized, not just inviting a minor into a car, but inviting a minor to accompany an adult "in any manner." This, combined with the fact that there was no sexual intent required for the crime to be committed, resulted in a statute that was unconstitutionally overbroad. The Court held that:

> [T]he statute very well might criminalize a senior citizen asking a neighborhood boy to help her across the street, or to rake leaves in her back yard for money….The potential applications of [this statute] to entirely innocent solicitations are endless….As a result, we conclude that [this version of the statute] is substantially overbroad and unconstitutional on its face.[16]

The Court indicated in dicta, though, that the recent addition of a "sexual motivation" element to the statute might "help eliminate the overbreadth problem we have found herein."[17]

In summary, of the four states that have attempted to create a strict liability crime of inviting or luring a minor to accept a ride in a motor vehicle, two have had their statutes upheld, one has not had any appellate rulings on its statute, and one had its statute struck down for being overbroad, partly due to its including "an invitation to accompany in any manner," in the prohibited conduct.[18]

C. Statutes where the offer of a ride is deemed to be attempted abduction

While the focus of the review of the other states' statutes was to identify any states that had created a strict liability crime, similar to that proposed by HB 2396, a number of states were found where the act of attempting to lure child is deemed to be either abduction or attempted abduction. For example, in the Illinois statute, discussed above, the crime of "intentionally [luring]…a child under the age of 16 into a motor vehicle" is defined as a crime of "child abduction."[19] Michigan's child abduction statute is defined in even broader terms:

> A person shall not maliciously, forcibly, or fraudulently lead, take, carry away, decoy, or entice away, any child under the age of 14 years, with the intent to detain or conceal the child from the child's parent or legal guardian….A person who violates this section is guilty of a felony, punishable by imprisonment for life or any term of years.[20]

While there is no element of inviting the minor into a motor vehicle in this statute, it is made a crime, generally, to fraudulently entice a child away, with the intent to conceal the child from his parents.

Under a number of scenarios, this statute might not prove sufficient to sustain a conviction against a stranger who invites a young child to come with him for a ride. For instance, the requirement of concealment, or the requirement of showing actual fraud or malice, might prove difficult. While general abduction statutes demonstrate a slightly different approach to criminalizing the predatory behavior of adults, especially strangers, who invite young children to accompany them in automobiles, their focus does not quite accomplish the goal of HB 2396.

Conclusion

Under most circumstances, an adult who attempts to solicit a child to accompany him in a motor vehicle, with a bad intent, will be subject to a successful prosecution, either for the crime of indecent liberties, or attempted abduction. However, there are a few scenarios where such a prosecution could be very difficult—no specific intent of an illegal or sexual nature can be shown, and the general circumstances of the interaction between the adult and the child, while suspicious, are capable of an innocent, though unlikely, explanation. For these situations, it could be helpful for law enforcement and prosecutors to have a more general criminal statute available to them, one which criminalizes, in a strict liability way, an adult who invites a young child to accompany him in an automobile. However, such a statute must also contain an exception to cover "good Samaritan" offers of assistance to unaccompanied children who appear to be lost or in need of transportation, and exceptions for those adults who, in the regular course of their duties, might reasonably be expected to offer a child a ride. Examples of such occupations would include law enforcement, emergency service providers, school bus drivers, and others who provide services to young children on a regular basis.

After deliberation, the Crime Commission declined to endorse the creation of a strict liability crime in Virginia that would penalize adults who offer automobile rides to children, without any additional showing of bad intent.

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[1] H.B. 2396, 2011 Gen. Assemb., Reg. Sess. (Va. 2011).
[2] Each of these scenarios was reported as having occurred in Virginia in 2010. In both cases, there were no additional statements or actions made by the adult; no criminal prosecutions were initiated.
[3] VA. CODE ANN § 18.2-370 (2011).
[4] 720 Ill. Comp. Stat. Ann. 5/10-5(b)(10) (West 2010).
[5] People v. Woodrum, 860 N.E.2d 259 (Ill. 2006).
[6] State v. Brake, 796 S.2d 522 (Fla. 2001).
[7] FL. STAT. ANN. § 787.025(2)(a) (West 2011). If the defendant previously has been convicted of a sex offense, which was where the prior prima facie presumption came into play, then the crime is a felony, not a misdemeanor. FL. STAT. ANN. § 787.025(2)(b), (c) (West 2011).
[8] 18 PA. CONS. STAT. ANN. § 2910 (West 2010).
[9] Commonwealth v. Figueroa, 648 A.2d 555 (Pa. Super. 1994).
[10] NEB. REV. STAT. ANN. § 28-311(a)(1), (b) (West 2011). Section a(2), omitted from the citation, was added to the statute in 2011, and criminalizes inviting a minor into a location with the intent to seclude the minor from his parents or the general public.
[11] WASH. REV. CODE ANN. § 9A.40.090 (West 2011).
[12] State v. Crowl, 119 Wash. App. 1033, 2003 WL 22794534 (Div. 2 2003).
[13] OHIO REV. CODE ANN. § 2905.05 (West 2006).
[14] *See* OHIO REV. CODE ANN. § 2905.05 (West 2011). The statute has not been modified since the last amendments made in 2007.
[15] State v. Chapple, 888 N.E.2d 1121 (Ohio 2008).
[16] Id. at 1125-1126.
[17] Id. at 1126.

[18] Earlier versions of the Ohio statute, which were limited to invitations to enter into a motor vehicle, had been upheld by other Ohio Courts of Appeals. State v. Long, 550 N.E.2d 522 (Ohio 1989); State v. Kroner, 551 N.E.2d 212 (Ohio 1988).
[19] 720 ILL. COMP. STAT. ANN. 5/10-5(b)(10) (West 2010).
[20] MICH. COMP. LAWS ANN. § 750.350 (West 2011).