



House Bill 2396: Solicitation of a Minor

July 25, 2011

Overview



- Study Authorization
- House Bill 2396
- Legal Issues
- Other State Statutes
- Policy Issues
- Discussion

Study Authorization



- House Bill 2396, introduced by Delegate Rob Bell during the 2011 Regular Session of the General Assembly, would create a new criminal statute:
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.

House Bill 2396



- The proposed statute creates a “rebuttable presumption” that law enforcement, family or household members, guardians, and people who have the permission of a family member or guardian, are not in violation of the statute.

Legal Issues



- The object of the proposed statute is to make it a crime for predators to invite minors into automobiles, under circumstances where no additional criminal intent can be proven.
- Example: Predator invites child to enter his car to receive some candy, or take a trip to an amusement park.
 - The child does not enter the car, so there is no abduction.
 - The predator does not suggest any sexual acts to the child.

Legal Issues



- Under Virginia's indecent liberties statute, Va. Code § 18.2-370, it is already a crime to “entice, allure, persuade, or invite any such child [under 15 years of age] to enter any vehicle, room, house, or other place, for any [sexual purpose].”
- The new statute would be applicable when a sexual intent cannot be directly proven or inferred.
- The concern is that such a statute would criminalize innocent conduct, as well as the actions of predators.

Other State Statutes



- Most state statutes that criminalize luring or enticing a minor are like Virginia's—they require some type of criminal intent to be shown.
- A few states have statutes that use a different approach:
 - Criminal intent can be inferred from the action.
 - The offer of the ride is a crime, all by itself.
 - Offering a ride is made the equivalent of attempted abduction.

Other State Statutes



- Illinois provides an example of a statute where intent can be inferred:

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. 720 Ill. Comp. Stat. Ann. 5/10-5(b)(10) (West 2010).
- The prima facie presumption was held to be facially unconstitutional by the Illinois Supreme Court. People v. Woodrum, 860 N.E.2d 259 (Ill. 2006).

Other State Statutes



- Florida's luring statute had an identical prima facie presumption, that lack of parental consent equated to an unlawful purpose when a sex offender lured a child under the age of 12 into a dwelling or car. Fl. Stat. Ann. § 787.025(2)(b) (West 2001).
- The Florida Supreme Court held that this prima facie presumption was unconstitutional. State v. Brake, 796 So.2d 522 (Fla. 2001).

Other State Statutes



- Pennsylvania provides an example of a statute where the act of luring, or offering a ride, is a crime without any additional intent needed:

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, express or implied, 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. 18 Pa. Cons. Stat. Ann. § 2910 (West 2010).
- The Pennsylvania Superior Court has upheld this statute, and affirmed that no ill intent is required for conviction. Commonwealth v. Figueroa, 648 A.2d 555 (Pa. Super. 1994).

Other State Statutes



- Nebraska's statute is similar, with an affirmative defense which is defined in more detail: "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 [under the age of 14]." Neb. Rev. Stat. Ann. § 28-311 (2011).
- It is also an affirmative defense if the person had the permission of the child's parent or guardian, or if the person was a law enforcement officer, emergency services provider, operator of a bookmobile or other vehicle operated by the state, or a person working for a nonprofit, and the activity was done within the scope of lawful duties.

Other State Statutes



- Washington's statute is also similar:

A person commits the crime of luring if the person orders, lures, or attempts to lure a minor [under the age of 16] 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; does not have the consent of the... parent or guardian...and is unknown to the child or developmentally disabled person.

It is a[n affirmative] defense to luring...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.... Wash. Rev. Code Ann. § 9A.40.090 (West 2011).
- The Washington Court of Appeals has upheld this statute, and stated that a bad or sexual intent is not a part of the crime. State v. Crowl, 119 Wash. App. 1033, 2003 WL 22794534 (Div. 2 2003).

Other State Statutes



- Ohio's luring statute at one time did not have an intent element:
No person...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: the actor does not have the express or implied permission of the parent...[and] 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 is not acting within the scope of the actor's lawful duties in that capacity. It is an affirmative defense...[that the action was taken] 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. Ohio Rev. Code Ann. § 2905.05 (West 2006).

Other State Statutes



- One of Ohio's Courts of Appeals held that this version of the statute was unconstitutional.
- The Court focused on the fact that the statute involved soliciting a child to accompany the actor "in any manner," not just by entering into a vehicle, and that there was no requirement that the defendant have the intent to commit any unlawful act.
- "[T]he statute very well might criminalize a senior citizen asking a neighborhood boy to help carry her groceries, to help her across the street, or to rake leaves in her back yard for money....The potential applications of R.C. 2905.05(A) to entirely innocent solicitations are endless....As a result, we conclude that R.C. 2905.05(A) is substantially overbroad and unconstitutional on its face." State v. Chapple, 175 Ohio App.3d 658 (2008).

Other State Statutes



- Michigan provides an example of a statute where the act of enticing a minor is deemed to be attempted abduction:
 - 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. Mich. Com. Laws Ann. § 750.350 (West 2011).

Policy Issues



- If Virginia were to enact legislation in this area, should it be a strict statute with no intent required, like Washington and Nebraska have, or should it be a variant of attempted abduction, like the Michigan statute?
- If Virginia were to enact a strict child luring statute, prima facie assumptions should be avoided.
- Should the exclusions (police in lawful course of duties; reasonable belief offer of ride was necessary to preserve health, safety, or welfare of child, etc.) be part of the criminal statute, or should they be made an affirmative defense?



Discussion
