

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 9, 1998 Revised: 03/18/98 _____

Subject: Day Care Facilities

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	Crosby	Whiddon	CF	Fav/2 amendments
2.	_____	_____	CJ	_____
3.	_____	_____	WM	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 1122 creates the "Jeremy Fiedelholz Safe Day Care Act" and will increase to a felony certain violations committed by persons who misrepresent information about their facility or for those who violate specific provisions of Florida's child care law. Licensed family child care providers are included under certain penalties relating to licensure that had previously applied only to centers. Elements which are considered misrepresentation, including those related to the licensure or operation of a child care facility or family day care home which are made to a parent or guardian who has a child placed in the facility or who is inquiring as to placing a child in a facility, are considered a felony violation as is the failure to observe currently required staff to child ratios. The state of mind required for the above-referenced offenses is amended from "willfully, knowingly, or intentionally" to "knowingly." This bill provides for the ranking of violations on the offense severity ranking chart.

This bill substantially amends sections 402.319 and 921.0022 of the Florida Statutes.

II. Present Situation:

The Department of Children and Family Services, as well as local licensing agencies, are currently responsible for the licensure and regulation of 6027 child care facilities and 4652 family day care homes. Another 3431 family day care homes are registered.

Florida's child care program is regulated pursuant to ss. 402.301 - 402.319, F. S. Penalties are stated at s. 402.319, F.S. Pursuant to this section, it is currently a first degree misdemeanor, which carries a term of imprisonment not to exceed 1 year, for any person to willfully, knowingly, or intentionally:

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- Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for voluntary or paid employment or licensure, as regulated under ss. 402.301-402.318, F.S., a material fact used in making a determination as to the person's qualifications to be an owner, operator, employee, or volunteer in a child care facility or other child care program.
 - Operate or attempt to operate a child care facility without having procured a license as required.
 - Operate or attempt to operate a child care facility under a license that is suspended, revoked, or terminated.
 - Represent, by act or omission, a child care facility to be duly licensed when the facility is not so licensed.
 - Operate or attempt to operate a family day care home without a license or without registering with the department.

Furthermore, disciplinary actions, as stated at s. 402.310, F.S., will be taken for the violation of provisions stated under ss. 402.301-402.319, F.S., and of the rules adopted in 65C-22 and 65C-20, Florida Administrative Code, and allow for the denial, suspension, revocation or the imposition of administrative fines.

The offense severity ranking chart, as listed regarding criminal punishment (s. 921.0022, F.S.), is used in conjunction with a Criminal Punishment Code worksheet (see s. 921.0024, F.S.) to compute a sentence code score for each felony offender. For the purposes of this analysis it is important to note that the offense severity ranking chart includes 10 offense levels; these levels are ranked from the least severe (level 1) to the most severe (level 10). Each felony offense is assigned to a level commensurate with the severity of the offense. See generally s. 921.0022, F.S.

III. Effect of Proposed Changes:

Section 1 cites this act as the "Jeremy Fiedelholtz Safe Day Care Act."

Section 2 amends s. 402.319, F.S., enhancing penalties with regard to day care. Currently, the department and local licensing agencies license and regulate 4652 family day care homes; 3431 family day care homes are registered. The licensed family child care providers are now included to face certain penalties relating to licensure that previously applied only to centers; failure to register a family day care home is also a felony.

The following acts are classified as a felony of the third degree, which is punishable by a term of imprisonment not to exceed 5 years and may result in a fine not to exceed \$5000:

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- Failure, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for voluntary or paid employment or licensure, regulated under ss. 402.301-402.318, F.S., all information required under those sections or a material fact used in making a determination as to the person's qualifications to be child care personnel, as defined in s. 402.302, F.S. in a child care facility, family day care home, or other child care program.
 - Operation or attempt to operate a child care facility without having procured a license as required.
 - Operation or attempt to operate a family day care home without a license or without registering with the department, whichever is applicable.
 - Operation or attempt to operate a child care facility or family day care home under a license that is suspended, revoked, or terminated.
 - Misrepresentation, by act or omission, of a child care facility or family day care home as being licensed pursuant to this act without being so licensed.
 - Making any other misrepresentation, by act or omission, regarding the licensure or operation of a child care facility or family day care home to a parent or guardian who places a child in the facility or a parent or guardian who is inquiring regarding placement of a child in the facility or to a representative of the licensing authority or law enforcement on issues including the number of children in the facility, the part of the facility designated for child care, and the credentials of the child care personnel.
 - Operating a child care facility or family day care home in violation of s. 402.302(7), F.S., relating to family day care homes, and s. 402.305(4), F.S., relating to staff to child ratios.

Under current law, abuse or neglect of a child is classified as a third degree felony. See s. 827.03, F.S.

At subsection (1), the state of mind required for an offense committed under this section is amended from "willfully, knowingly, or intentionally" to "knowingly." This change may not be a major one since these terms are defined synonymously in Barron's Law Dictionary. For example, in the civil context (as under current law), the term "willfully" denotes an act that is "intentional, or knowing, or voluntary, as distinguished from accidental." BARRON'S LAW DICTIONARY 530 (3d Ed. 1991). The term "intent" is defined as "a state of mind wherein the person knows and desires the consequences of his act..." BARRON'S LAW DICTIONARY 245 (3d Ed. 1991).

A new subsection (2) is added, providing that, in the event great bodily harm, permanent disability or disfigurement results from a violation of this section, the violation will be a felony of the second degree. No state of mind requirement is specified. A felony of the second degree is

punishable by a term of imprisonment not to exceed 15 years and may result in a fine not to exceed \$10,000.

A comparable second degree felony, which includes a state of mind requirement, is listed under the definition of child neglect at s. 827.03(3)(b), F.S. Here, the law provides that, “A person who willfully or by culpable negligence neglects a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the second degree....”

Section 3 amends s. 921.0022, F.S., to provide for the ranking of the “felony misrepresentation or operation of a child care facility” as a third degree felony at level 6 of the offense severity ranking chart. This amendment also provides for the ranking of the violation, “child care facility violation resulting in great bodily harm or permanent disability or disfigurement,” as a second degree felony at level 7 of the offense severity ranking chart.

Section 4 provides an effective date of October 1 of the year in which enacted.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Pursuant to s. 775.083, F.S., any person who has been convicted of an offense other than a capital penalty may be sentenced to pay a fine. The fine for a felony of the third degree shall not exceed \$5000; the fine for a felony of the second degree shall not exceed \$10,000.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

In law there are four criminal states of mind often expressed with regard to an actor's conduct: (1) intentionally, (2) knowingly, (3) recklessly, and (4) grossly (criminally) negligent. BARRON'S LAW DICTIONARY 296 (3d Ed. 1991). Alternatively, a crime may be strict liability, otherwise known as liability without fault. In section 2 of SB 1122, in the event great bodily harm, permanent disability or disfigurement results from a violation of this section, the violation will be a felony of the second degree. There is, however, no state of mind requirement in this section of law. Comparable sections of law, such as that listed under child neglect, which result in similar consequences, contain a state of mind of willful or culpable negligence. See e.g., s. 827.03(3)(b), F.S. If section 2 of SB 1122 is written as strict liability, it is likely that equal protection issues may be raised in conjunction with defending a prosecution. Consequently, it is suggested that this section be clarified to state a similar state of mind to that which exists in current law. [See Amendment #2, below.]

VII. Related Issues:

Currently, disciplinary actions, as stated at s. 402.310, F.S., allow for the denial, suspension, revocation or the imposition of administrative fines for the violation of provisions stated under ss. 402.301-402.319, F.S., and of the rules adopted in 65C-22 and 65C-20, Florida Administrative Code. Although the law does require certain staff-to-child ratios be observed and disciplinary action be taken for the violation thereof, there is some concern in the child care community that the third degree felony penalty for a violation of these ratios may go beyond that which is necessary.

Performance measures for fiscal year 1998-1999 in the area of child care include:

- 97 percent of child care facilities and family day care homes with no Class I violations (the most serious of violations).

Performance measures for fiscal year 1998-1999 reflect the following changes over current year:

- A 25 percent reduction in the number of child care provisional licenses issued as a result of non-compliance (500 to 375).
- A 25 percent reduction on the number of verified incidents of abuse and/or neglect in licensed child care (83 to 62).

VIII. Amendments:

#1 by Children, Families, and Seniors:

This amendment provides that, while it is unlawful to operate a child care facility or a family day care home in violation of applicable staff-child ratios, emergency situations (unforeseen circumstances) are excepted from the felony penalty.

#2 by Children, Families, and Seniors:

This amendment provides a state of mind requirement of willful or culpable negligence in the event great bodily harm, permanent disability or disfigurement results from a violation of this section. This is added so that this section is consistent with other, existing sections of law.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
