

STORAGE NAME: h3581.cp

DATE: March 27, 1998

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3581

RELATING TO: Child care facilities

SPONSOR(S): Representative Effman

COMPANION BILL(S): SB 1122

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) Family Law and Children YEAS 5 NAYS 0
- (2) Children and Family Empowerment YEAS 8 NAYS 0
- (3) CRIME AND PUNISHMENT
- (4) Criminal Justice Appropriations
- (5)

I. SUMMARY:

The bill creates criminal penalties and enhances other criminal penalties relating to the operation and licensure of family day care homes and child care facilities.

A "family day care home" is any household that provides child care to two unrelated children for money. All family day care homes are required to be registered, and the family day care homes must be licensed if the local county has opted to subject them to licensing. The penalty for knowingly failing to be licensed or to register, as required, is increased from a misdemeanor to a third degree felony by this bill.

A "child care facility" is any arrangement which provides child care to more than five unrelated children. The bill increases the penalty for knowingly operating a child care facility without a license from a first degree misdemeanor to a third degree felony.

The bill increases the penalty from a misdemeanor to a felony for the offense of fraudulently failing to disclose all information required by statute for an application for a child care facility. The bill also imposes the same penalties for applications for a "family day care home" license.

The bill creates a third degree felony penalty for making misrepresentations by act or omission regarding the number of children at the facility, the part of the facility designated for child care, or the training and screening requirements for child care personnel.

The bill creates a third degree felony for operating either a family day care home or a child care facility in violation of requirements relating to the staff-to-children ratio or the number of children at the facility. For instance, a family day care home may not have more than four children under 12 months of age. Related children are included in the mandatory ratio.

The above third degree felonies are enhanced to second degree felonies if there is great bodily harm as a result of the violation.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Legislature has stated its intent regarding child care facilities in F.S. 402.301: It is the purpose of ss. 402.301- 402.319 to establish statewide minimum standards for the care and protection of children in child care facilities, to ensure maintenance of these standards, and to approve county administration and enforcement to regulate conditions in such facilities through a program of licensing.

Child care facilities: A “**child care facility**” is defined in F.S. 402.302(2) as any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit. Public and nonpublic schools, summer camps, summer day camps, and bible schools are not included in the definition.

“Child care personnel” means all owners, operators, employees, and volunteers working in a child care facility. For purposes of screening, the term includes any member over the age of 12 years, residing with a child care facility operator if the child care facility is located in or adjacent to the home of the operator or if the family member of the child care facility operator has any direct contact with the children in the facility during its hours of operation. A volunteer who assists on an intermittent basis for less than 40 hours per month is not included in the term “personnel” for the purposes of screening and training, provided that the volunteer is under direct and constant supervision by a person who meets the personnel requirements.

Florida Statute chapter 402.305 sets forth the licensing standards for child care facilities. The state is required to establish licensing standards that each licensed child care facility must meet regardless of the origin or source of the fees used to operate the facility or the type of children served by the facility. The minimum standards include requirements for:

- personnel;
- minimum staff credentials;
- staff-to-children ratios;
- physical facilities;
- square footage per child;
- sanitation and safety;
- nutritional practices;
- admissions and record keeping;
- transportation safety;
- access;
- child discipline;
- plan of activities;
- urban child care facilities;
- transition periods; and
- evening and weekend child care.

Counties whose licensing standards meet or exceed state minimum standards may designate a local licensing agency to license child care facilities in the county or contract with the Department of Children and Family Services to delegate the

administration of state minimum standards in the county to the department. Child care facilities in any county whose standards do not meet or exceed state minimum standards shall be subject to licensing by the department under state minimum standards. F.S. 402.306. Every child care facility in the state is required to have a license which shall be renewed annually. Pursuant to F.S. 402.309, provisional licenses may be granted to applicants who are unable to conform to all the standards.

The department or local licensing agency may deny, suspend, or revoke a license or impose an administrative fine not to exceed \$100 per violation, per day for violations of ss. 402.301 - 402.319. Where the violation could or does cause death or serious harm, the administrative fine may be imposed not to exceed \$500 per violation per day. If a child care facility is operating without a license, the department or local licensing agency is authorized to seek an injunction in the circuit court where the facility is located to enjoin continued operation of such facility.

Family day care homes: A "family day care home" is defined in F.S. 402.302(7) as an occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit. A family day care home is allowed to provide care for specified groups of children, designated by age.

Family day care homes are required to be licensed if they are presently being licensed under an existing county licensing ordinance, if they are participating in the subsidized child care program, or if the board of county commissioners passes a resolution that family day care homes be licensed. If no county authority exists for the licensing of a family day care home, the department shall have the authority to license family day care homes under contract. If not subject to license, family day care homes shall register annually with the department. F.S. 402.313.

A family day care home may volunteer to be licensed under the provisions of this act. The department or local licensing agency may impose an administrative fine, not to exceed \$100, for failure to comply with licensure or registration requirements. Rule 65C-20.002, Florida Administrative Code, sets forth the standards for family day care homes. The rule includes requirements for background screening, training, minimum age, emergency arrangements, health of operators and household members, and handicapped children.

Penalties: F.S. 402.319, which is the subject of HB 3581, sets forth the penalties for violation of the licensure or operation of child care facilities or family day care homes. It is a misdemeanor of the first degree for any person willfully, knowingly, or intentionally to:

- (1) Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for voluntary or paid employment or licensure, a material fact used in making a determination as to such person's qualifications to be an owner, operator, employee, or volunteer in a child care facility or other child care program.
- (2) Operate or attempt to operate a child care facility without having procured a license as required by this act.
- (3) Operate or attempt to operate a child care facility under a license that is suspended, revoked, or terminated.

(4) Represent, by act or omission, a child care facility to be duly licensed pursuant to this act without being so licensed.

(5) Operate or attempt to operate a family day care home without a license or without registering with the department, whichever is applicable.

A first degree misdemeanor is punishable by a definite term of imprisonment not to exceed one year pursuant to F.S. 775.082. In addition to any punishment, a person who has been convicted of a first degree misdemeanor may be fined \$1,000.

A third degree felony is punishable by a term of imprisonment not to exceed five years. In addition to any punishment, a person who has been convicted of a third degree felony may be fined \$5,000.

A second degree felony is punishable by a term of imprisonment not to exceed fifteen years. In addition to any punishment, a person who has been convicted of a second degree felony may be fined \$10,000.

Current law does not require child care facilities or family day care homes to carry general liability insurance. Subsidized child care programs are provided coverage through the Division of Risk Management of the Department of Insurance pursuant to F.S. 402.3015(6)(f).

B. EFFECT OF PROPOSED CHANGES:

The bill creates the "Jeremy Fiedelholz Safe Day Care Act."

The bill creates criminal penalties and enhances other criminal penalties relating to the operation and licensure of family day care homes and child care facilities.

A "family day care home" is any household that provides child care to two unrelated children for money. All "family day care homes" are required to be registered, and the family day care homes must be licensed if the local county has opted to subject them to licensing. The penalty for knowingly failing to be licensed or to register, as required, is increased from a misdemeanor to a third degree felony by this bill.

A "child care facility" is any arrangement which provides child care to more than five unrelated children. The bill increases the penalty for knowingly operating a child care facility without a license from a first degree misdemeanor to a third degree felony.

The bill increases the penalty from a misdemeanor to a felony for the offense of fraudulently failing to disclose all information required by statute for an application for a child care facility. The bill also imposes the same penalties for applications for a family day care home license.

The bill creates a third degree felony penalty for making misrepresentations by act or omission regarding the number of children at the facility, the part of the facility designated for child care, or the training and screening requirements for child care personnel. This offense is ranked as a level six in the offense severity ranking chart for the criminal punishment code. A level six offense, without other prior offenses, does not require the imposition of a prison sentence.

The bill creates a third degree felony for operating either a family day care home or a "child care facility" in violation of requirements relating to the staff-to-children ratio or the number of children at the facility. For instance, a family day care home may not have more than four children under 12 months of age. Related children are included in the mandatory ratio.

The above third degree felonies are enhanced to second degree felonies if there is great bodily harm as a result of the violation. The second degree offense is ranked as a level 7 offense in the offense severity ranking chart. A level 7 offense requires that a judge impose a prison sentence.

The third degree felonies that are not ranked in the offense severity ranking chart ranked as a level one by default.

The bill has an effective date of October 1 of the year in which it is enacted.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

HB 3581 amends F.S. sections 402.319 and 921.0022. Amendment two amends ss. 402.305 and 402.313.

E. SECTION-BY-SECTION RESEARCH:

Section 1: Names this act as the "Jeremy Fiedelholz Safe Day Care Act."

Section 2: Amends F.S. 402.319 to eliminate the requirement that the act be done willfully or intentionally and to increase the penalty to a third degree felony to knowingly violate provisions relating to licensure or operation of a child care facility or family day care home. Adds to the provisions that it is a third degree felony to knowingly:

(f) Make 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 has a child placed in the facility or is inquiring as to placing a child in the facility, or to a representative of the licensing authority, or to a representative of a law enforcement agency, including, but not limited to, any misrepresentation as to:

1. the number of children at the facility, in violation of s. 402.302(7) or s. 402.305(4);
2. the part of the facility designated for child care; or
3. the training and screening requirements, as defined by statute, in child care facilities or family day care homes.

(g) Operate a child care facility or family day care home in violation of s. 402.305(4) (staff-to-children ratio), and in violation of direct supervision of the child(ren), except for emergency situations, including but not limited to, illness of child care personnel or family emergencies.

(h) Operate a family day care home in violation of s. 402.302(7) (maximum number of children allowed to be cared for in a family day care home), except for emergency situations, including but not limited to, illness of child care personnel or family emergencies.

Increases the penalty to a felony of the second degree in the event that great bodily harm, permanent disability, or permanent disfigurement results from a violation of this section.

Section 3: Amends F.S. 921.0022 to add felony misrepresentation or operation of a child care facility to the offense severity ranking chart as a felony of the third degree. Adds child care facility violations resulting in great bodily harm, or permanent disability or disfigurement to the offense severity ranking chart as a felony of the second degree.

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

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Amendment two requires child care facilities and family day care homes to carry \$100,000 of general liability insurance. The expected cost to private providers is minimal.

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The bill increases the penalty from a misdemeanor to a felony for operating a family day care home or a child care facility without a license or without registering as required. Under the new sentencing Code, this common offense could be punished by up to five years in prison. Prison time would not be mandatory and would likely be rarely imposed. The other offenses created or enhanced are infrequently prosecuted and should not result in a significant impact to the Department of Corrections or to the county jails.

The Criminal Justice Estimating Conference will estimate the impact of the bill on April 3, 1998. It is anticipated that the bill's impact will be minimal.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The bill provides that all the third degree offenses provided by this section and described above, are enhanced to second degree felonies if there is great bodily harm as a result of the violation. However, violations such as failing to register or misrepresenting the credentials of staff can not, in themselves, result in great bodily harm. The bill could be amended to impose strict liability, so that a person would be criminally liable for the great bodily harm if the person ever violated this section, however, strict liability would raise other issues. Such a provision would be similar to felony murder which makes the killing of a person a capital felony if it occurred during the course of a serious felony regardless of whether the killing was intentional. Felony murder requires that the killing occur during the course of another crime.

Great bodily harm could easily occur during the knowing operation of a facility without a license, but it is unlikely to occur during the course of a misrepresentation. If strict liability for great bodily harm were not limited to acts that occur during the course of another crime, then the Florida Supreme Court may strike the enhancement for vagueness, otherwise, a misrepresentation made 20 years in the past could subject a person to a new second degree felony.

Amendment One, adopted by the Family Law and Children Committee and the Children and Family Empowerment Committee, clarifies parts of the bill and raises some issues as noted below.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Two amendments were adopted by the Committee on Family Law and Children on March 11, 1998. The Children & Family Empowerment Committee adopted amendment one but did not adopt amendment two on March 24, 1998. No new amendments were added by the Children & Family Empowerment Committee.

Amendment One (adopted by Family Law and Children Committee and Children and Family Empowerment Committee): The amendment clarifies that it is a felony to misrepresent the number of children and the part of the facility or home designated for child care. The original language is vague as to whether the provision applies to both child care facilities and family day homes.

The amendment replaces the provision that makes it a felony to misrepresent the credentials of child care personnel with a new provision that makes it a felony to misrepresent the statutory training and screening requirements. The amendment does not penalize a misrepresentation that personnel meet the statutory training and screening requirements.

The amendment provides that the maximum number of children that a family day care home may care for, may be exceeded for reason "including but not limited to, illness of child care personnel or family emergencies." Thus, it is possible that any reason would authorize an exception to the maximum number of children allowed. Unlike child care facilities, which have mandatory staff-to-child ratios, a family day care home has a maximum cap, and typically, there is only one care giver. It is not clear if the exception authorizes the care

giver to be absent or if the care giver may take on additional children when the children have no other place to go because of some family emergency.

Amendment Two (adopted by Family Law and Children, but not reported favorably by Children and Family Empowerment Committee): Adds sections 4 and 5 to HB 3581, and renumbers current section 4 (effective date provision) as section 6. The new section 4 amends F.S. 402.305 to require child care facilities to obtain and maintain general liability insurance coverage, in an amount no less than \$100,000, for any liability arising from the operation of a child care facility. The new section 5 amends F.S. 402.313(1)(a) to add a registration requirement that family day care homes provide proof of general liability insurance coverage, in an amount no less than \$100,000, for any liability arising from the operation of a family day care home. The new section 6 has an effective date of October 1 of the year in which enacted.

VII. SIGNATURES:

COMMITTEE ON Family Law and Children:

Prepared by:

Legislative Research Director:

Stephanie Olin

Stephanie Olin

AS REVISED BY THE COMMITTEE ON Children and Family Empowerment:

Prepared by:

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AS FURTHER REVISED BY THE COMMITTEE ON CRIME AND PUNISHMENT:

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