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Bill Analysis
Legislative Service Commission

H.B. 759

123rd General Assembly
(As Introduced)

Reps. Jerse, Salerno, Mottley, Pringle, D. Miller, DePiero, Ford, Patton, Distel, Smith, Hartnett, Allen, Flannery

BILL SUMMARY

- Prohibits a child day-care provider providing child day-care to a child under 11 years of age from recklessly causing serious physical harm to the child.
- Prohibits a child day-care provider from knowingly misrepresenting by act or omission the provision of child day-care to any of specified persons if the misrepresentation places the health or safety of a child substantially at risk.

CONTENT AND OPERATION

Reckless assault of a child by a child day-care provider

The bill creates the offense of reckless assault of a child by a child day-care provider.¹ The bill prohibits a child day-care provider providing child day-care to a child under 11 years of age from recklessly causing serious physical harm to the child. A person who violates this prohibition is guilty of reckless assault of a child by a child day-care provider, a felony of the second degree. (R.C. 2903.17(B) and (C).)

¹ As used in this prohibition, "child day-care provider" means a person who is any of the following (R.C. 2903.17(A)(2)): (1) an owner, administrator, or employee of, or volunteer at, a child day-care center or type A family day-care home, (2) a provider or employee of, or volunteer at, a type B family day-care home, (3) an administrator or employee of, or volunteer at, a type C family day-care home, (4) an in-home aide, or (5) a director or employee of, or volunteer at, a preschool program or school child program.

Misrepresentation by a child day-care provider

The bill creates the offense of misrepresentation by a child day-care provider.² The bill prohibits a child day-care provider from knowingly misrepresenting by act or omission the provision of child day-care to any of the following if the misrepresentation places the health or safety of a child substantially at risk (R.C. 2919.221(B)):³

- (1) A parent, guardian, custodian, or other person responsible for the care of a child receiving child day-care from the provider;
- (2) A parent, guardian, custodian, or other person responsible for the care of a child considering the provider as a child day-care provider for the child;
- (3) A public official responsible for issuing the provider a license or certificate to provide child day-care;
- (4) A peace officer.

A person who violates this prohibition is guilty of misrepresentation by a child day-care provider, a felony of the fifth degree (R.C. 2919.221(C)).

² For the purposes of this offense, "child day-care provider" means any of the following (R.C. 2919.221(A)(2)): (1) an owner, administrator, or employee of, or volunteer at, a child day-care center or type A family day-care home, (2) a provider or employee of, or volunteer at, a type B family day-care home, (3) an administrator or employee of, or volunteer at, a type C family day-care home, (4) an in-home aide, (5) a director or employee of, or volunteer at, a preschool program or school child program, or (6) a person who represents that the person provides child day-care.

³ For the purposes of this prohibition, to "misrepresent the provision of child day-care" includes misrepresenting any of the following (R.C. 2919.221(A)(4)):

- (1) The number of children to whom child day-care is provided at one time or the number of children receiving child day-care in a center, home, or school at one time;
- (2) The area of the center, home, or school in which child day-care is provided;
- (3) The qualifications to provide child day-care of the child day-care provider or of a person employed by the provider or who provides child day-care as a volunteer.

Definitions

As used in the bill:

Child day-care

"Child day-care" means administering to the needs of infants, toddlers, preschool children, and school children outside of school hours by persons other than their parents or guardians, custodians, or relatives by blood, marriage, or adoption for any part of the 24-hour day in a place or residence other than a child's own home (R.C. 2903.17(A)(1) and 2919.221(A)(1) by reference to R.C. 5104.01(K)--not in the bill).

Child day-care center

"Child day-care center" means any place in which child day-care or publicly funded child day-care is provided for 13 or more children at one time or any place that is not the permanent residence of the licensee or administrator in which child day-care or publicly funded child day-care is provided for 7 to 12 children at one time. In counting children for the purposes of this provision, any children under six years of age who are related to a licensee, administrator, or employee and who are on the premises of the center are counted. (R.C. 2903.17(A)(1) and 2919.221(A)(1) by reference to R.C. 5104.01(L)--not in the bill.) "Child day-care center" does not include any of the following:

(1) A place located in and operated by a hospital in which the needs of children are administered to, if all the children whose needs are being administered to are monitored under the on-site supervision of a licensed physician or a licensed registered nurse, and the services are provided only for children who, in the opinion of the child's parent, guardian, or custodian, are exhibiting symptoms of a communicable disease or other illness or are injured;

(2) A child day camp;

(3) A place that provides child day-care, but not publicly funded child day-care, if all of the following apply: (a) an organized religious body provides the child day-care, (b) a parent, custodian, or guardian of at least one child receiving child day-care is on the premises and readily accessible at all times, (c) the child day-care is not provided for more than 30 days a year, and (d) the child day-care is provided only for preschool and school children.

Custodian

"Custodian" means a person who has legal custody of a child or a public children services agency or private child placing agency that has permanent,

temporary, or legal custody of a child (R.C. 2919.221(A)(3), by reference to R.C. 2151.011(B)(11)--not in the bill).

In-home aide

"In-home aide" means a person certified by a county director of job and family services to provide publicly funded child day-care to a child in a child's own home pursuant to the Child Day Care Law and any rules adopted under it (R.C. 2903.17(A)(1) and 2919.221(A)(1) by reference to R.C. 5104.01(X)--not in the bill).

Peace officer

"Peace officer" means a sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, or township constable, who is employed by a political subdivision of this state, a member of a metropolitan housing authority police force, member of a regional transit authority police force, a state university law enforcement officer, an Ohio veterans' home policeman, or a State Highway Patrol trooper and whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws, ordinances, or rules of the state or any of its political subdivisions (R.C. 2919.221(B)(4), by reference to R.C. 2921.51(A)(1)--not in the bill).

Preschool program

"Preschool program" means either of the following (R.C. 2903.17(A)(3) and 2919.221(A)(5), by reference to R.C. 3301.52(A)--not in the bill):

(1) A child day-care program for preschool children that is operated by a school district board of education, an eligible nonpublic school, a head start grantee, or a head start delegate agency.

(2) A child day-care program for preschool children age three or older that is operated by a county MR/DD board.

School child program

"School child program" means a child day-care program for only school children that is operated by a school district board of education, county MR/DD board, or eligible nonpublic school (R.C. 2903.17(A)(3) and 2919.221(A)(5), by reference to R.C. 3301.52(J)--not in the bill).

Serious physical harm

"Serious physical harm to persons" means any of the following (R.C. 2901.01(A)(5)--not in the bill):

- (1) Any mental illness or condition of such gravity as would normally require hospitalization or prolonged psychiatric treatment;
- (2) Any physical harm that carries a substantial risk of death;
- (3) Any physical harm that involves some permanent incapacity, whether partial or total, or that involves some temporary, substantial incapacity;
- (4) Any physical harm that involves some permanent disfigurement or that involves some temporary, serious disfigurement;
- (5) Any physical harm that involves acute pain of such duration as to result in substantial suffering or that involves any degree of prolonged or intractable pain.

Type A family day-care home

"Type A family day-care home" means a permanent residence of the administrator in which child day-care or publicly funded child day-care is provided for 7 to 12 children at one time or a permanent residence of the administrator in which child day-care is provided for 4 to 12 children at one time if four or more children at one time are under two years of age. In counting children for the purposes of this definition, any children under six years of age who are related to a licensee, administrator, or employee and who are on the premises of the type A home are counted. "Type A family day-care home" does not include a residence in which the needs of children are administered to, if all of the children whose needs are being administered to are siblings of the same immediate family and the residence is the home of the siblings. "Type A family day-care home" does not include any child day camp. (R.C. 2903.17(A)(1) and 2919.221(A)(1) by reference to R.C. 5104.01(QQ)--not in the bill.)

Type B family day-care home

"Type B family day-care home" means a permanent residence of the provider in which child day-care is provided for one to six children at one time and in which no more than three children are under two years of age at one time. In counting children for the purposes of this definition, any children under six years of age who are related to the provider and who are on the premises of the type B home are counted. "Type B family day-care home" does not include a residence in which the needs of children are administered to, if all of the children whose needs are being administered to are siblings of the same immediate family and the residence is the

home of the siblings. "Type B family day-care home" does not include any child day camp. (R.C. 2903.17(A)(1) and 2919.221(A)(1) by reference to R.C. 5104.01(RR)-not in the bill.)

Type C family day-care home

Sub. H.B. 62 of the 121st General Assembly required the Ohio Department of Human Services to establish a pilot project under which a person providing child day-care in Paulding County to one to nine children at one time may obtain certification as a type C family day-care home and be exempt from type A home licensing requirements.⁴ Am. Sub. S.B. 160 of the 121st General Assembly lengthened the pilot project and expanded it to six additional counties in Northwest Ohio: Defiance, Fulton, Henry, Putnam, Van Wert, and Williams. Sub. H.B. 407 of the 123rd General Assembly lengthened the pilot program again; it currently is to terminate March 28, 2003.

To obtain type C home certification, a child day-care provider must apply to a county director of human services and meet all the requirements for type B home certification, except for any requirements limiting to six the number of children who may receive child day-care at one time. Other requirements apply as well, including a prohibition against providing publicly funded child day-care. (R.C. 2903.17(A)(4) and 2919.221(A)(6).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	08-23-00	p. 2211

H0759-I.123/ejs

⁴ *Not more than six of the children cared for in a type C family day-care home may be under age six. The remaining children must be enrolled in school and may be cared for only when school is not in session.*