



Bill Analysis

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Legislative Service Commission

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(As Reported by H. Juvenile and Family Law)

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BILL SUMMARY

- Renames "child day-care" as "child care" and "publicly funded child day-care" as "publicly funded child care."
- Prohibits the Director of Job and Family Services from licensing a child day-care center or type A family day-care home if the Director determines all of the following: (1) the applicant previously had been certified as a type B family day-care home, (2) a county department of job and family services revoked that certification, (3) the revocation was based on the applicant's refusal or inability to comply with the criteria for certification, and (4) the refusal or inability resulted in a risk to the health or safety of children.
- Requires a county department of job and family services, on receipt of an application for a type B family day-care home certificate or renewal of such a certificate, to request from a public children services agency information concerning any abuse or neglect report of which the applicant is the subject.
- Requires a public children services agency to promptly provide to the Department of Job and Family Services or a county department of job and family services any information the agency determines to be relevant for the purposes of evaluating the fitness of a person who has applied for licensure or license renewal of a type A home or certification or certificate renewal of a type B home.

** This analysis was prepared before the report of the House Juvenile and Family Law Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Requires the Department of Job and Family Services to inspect a child day-care center or type A home, and a county director of job and family services to inspect a type B home or home of a child receiving publicly funded child care from an in-home aide, if a complaint alleges that a child suffered physical harm while receiving child care at the center or home or that the alleged noncompliance involved, resulted in, or poses a substantial risk of physical harm to a child receiving child care at the center or home.
- Requires the Director of Job and Family Services to adopt rules establishing standards for training individuals a county department of job and family services employs, or with whom a county department or the Department of Job and Family Services contracts, to inspect or investigate type B homes.
- Adds additional offenses that disqualify an individual from obtaining a child day-care center or type A home license or type B home certification.
- Provides that if a person who is the subject of a criminal records check in connection with the licensing of a child day-care center or type A home or certification of a type B home does not present proof that the person has been an Ohio resident for the five-year period immediately prior to the date when the criminal records check is requested or does not provide evidence that within that five-year period the Superintendent of the Bureau of Criminal Identification and Investigation has requested information about the person from the Federal Bureau of Investigation (FBI) in a criminal records check, the Superintendent must be requested to obtain information from the FBI as a part of the criminal records check.
- Prohibits a child care provider from knowingly misrepresenting to specified persons a factor or condition that relates to the provision of child care and substantially affects the health or safety of children in the provider's facility or receiving child care from the provider.
- Requires the owner, provider, or administrator of a type A or type B family day-care home to make certain disclosures before accepting a child into that home.

- Requires the owner, provider, or administrator of a type A or type B family day-care home to notify specified persons if a child dies while under the care of the home or while receiving child care from the owner, provider, or administrator.
- Requires the owner, provider, or administrator of a type A or type B family day-care home to notify specified persons if a child is hospitalized for more than 24 hours because of injuries sustained while under the care of the home or while receiving care from the owner, provider, or administrator, and requires a second notice if the child dies as a result of those injuries.
- Provides that, if the person responsible for the care of a child requests it, a child care center licensee must disclose certain information before accepting the child into that center.
- Requires a child care center licensee to notify certain persons when a currently enrolled child dies while under the care of the center or while receiving child care from the owner, provider, or administrator.
- Requires a care center licensee to notify certain persons when a currently enrolled child dies because of injuries suffered while under the care of the center or while receiving child care from the owner, provider, or administrator.
- Increases the penalty for operating a child day-care center or type A home without a license.
- Requires the Director of Job and Family Services to recommend standards for imposing sanctions on persons and entities licensed or certified under state law governing child care that violate any provision of that law.
- Revises the law governing child care providers' receipt of rules concerning licensure and certification.
- Increases the number of members of the Day-Care Advisory Council and renames it the Child Care Advisory Council.
- Provides for removal of a Council member for willful and flagrant exercise of authority or power that is not authorized by law, refusal or



willful neglect to perform any official duty as a member of the Council imposed by law, or for being guilty of misfeasance, malfeasance, nonfeasance, or gross neglect of duty as a member of the Council.

- Requires that the Council have two co-chairpersons: the Director of Job and Family Services, or the Director's designee, and an individual elected by the Council's members.
- Requires that the Council's annual report address the availability, affordability, accessibility, and quality of child care and summarize the recommendations and plans of action that the Council has proposed during the preceding fiscal year.
- Prohibits a child day camp from failing to conduct the criminal records checks required by existing law.
- Authorizes the Department of Job and Family Services to conduct random sampling of child day camps to determine compliance with the existing criminal records check requirements.
- Provides the Department of Job and Family Services with mechanisms to enforce the criminal records check laws, including the imposition of a civil penalty, issuing an order to initiate the required check, and notifying the public of the camp's failure to comply with the records check laws.
- Repeals a law under which a family who has a child enrolled in a Head Start program and receives publicly funded child care in a collaborative model at the same location continues to receive publicly funded child care until the end of the Head Start program year unless the child care fee is not paid.

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CONTENT AND OPERATION

Background

Current law provides for the Department of Job and Family Services to license, or county departments of job and family services to certify, the following child day-care providers: child day-care centers, type A family day-care homes, type B family day-care homes, and in-home aides.¹

¹ *Another type of child day-care provider is a child day camp, which is a program in which only school children attend or participate, operates for no more than seven hours per day, operates only during one or more public school district's regular vacation periods or for no more than 15 weeks during the summer, and operates outdoor activities for each child who attends or participates in the program for a minimum of 50% of each day that children attend or participate in the program, except for any day when hazardous weather conditions prevent the program from operating outdoor activities for a minimum of 50% of that day. (R.C. 5104.01(J).) Child day camps are not licensed or certified but may obtain approval from the Department of Job and Family Services for the purpose of providing publicly funded child day-care.*

There are also two types of school-based child day-care providers: preschool programs and school child programs. These providers are subject to regulation by the Department of Education rather than the Department of Job and Family Services. A preschool

A child day-care center is any place in which child day-care is provided for 13 or more children at one time or any place that is not the permanent residence of the licensee² or administrator³ in which child day-care is provided for seven to 12 children at one time. (R.C. 5104.01(L).)

A type A family day-care home is a permanent residence of the administrator in which child day-care or publicly funded child day-care is provided for seven to 12 children at one time or a permanent residence of the administrator in which child day-care or publicly funded child day-care is provided for four to 12 children at one time if four or more of the children are under two years of age. (R.C. 5104.01(RR).)

A type B family day-care home is 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. A home is not a type B home 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. (R.C. 5104.01(SS).)

An in-home aide is a person providing publicly funded child day-care to a child in a child's own home. (R.C. 5104.01(X).)

No person, firm, organization, institution, or agency may operate, establish, manage, conduct, or maintain a child day-care center or type A family day-care home without a license issued by the Director of Job and Family Services. (R.C.

program is a child day-care program for preschool children that is operated by a school district board of education or an eligible nonpublic school or a child day-care program for preschool children age three or older that is operated by a county board of mental retardation and developmental disabilities. A school child program is a child day-care program for only school children that is operated by a school district board of education, county board of mental retardation and developmental disabilities, or eligible nonpublic school. A preschool program may not operate without a license from the Department of Education. A school child program must obtain a license from the Department of Education only if it is to provide publicly funded child day-care. (R.C. 3301.52 and 3301.58.)

² "Licensee" is defined as the owner of a child day-care center or type A family day-care home that is licensed pursuant to state law governing child day-care and who is responsible for ensuring its compliance with the state law and rules adopted under the state law. (R.C. 5104.01(BB).)

³ "Administrator" is defined as the person responsible for the daily operation of a child day-care center or type A family day-care home. The administrator and the owner may be the same person. (R.C. 5104.01(A).)



5104.02.) A type B family day-care home may be operated without a license but can provide publicly funded child day-care only if it is certified by a county director of job and family services. (R.C. 5104.11.) An in-home aide may provide child day-care without a license but needs a certificate from a county director of job and family services to provide publicly funded child day-care. (R.C. 5104.12.)

Child day-care and publicly funded child day-care

(R.C. 5104.01 and ancillary sections)

Key to whether a provider is considered to be a child day-care provider is whether the provider provides child day-care or publicly funded child day-care. "Child day-care" is defined as administering to the needs of infants,⁴ toddlers,⁵ preschool children,⁶ and school children⁷ 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 home. (R.C. 5104.01(K).) "Publicly funded child day-care" is defined as administering to the needs of infants, toddlers, preschool children, and school children under age 13 during any part of the 24-hour day by persons other than their caretaker parents for remuneration wholly or in part with federal or state funds, including funds available under the Child Care and Development Block Grant or Title IV-A or Title XX of the Social Security Act that are distributed by the Department of Job and Family Services. (R.C. 5104.01(JJ).)

The bill changes these terms but not their definitions. "Child day-care" becomes "child care," and "publicly funded child day-care" becomes "publicly funded child care." The bill does *not* change "child day-care center" to "child care center," "type A family day-care home" to "type A family child care home," or "type B family day-care home" to "type B family child care home." The bill does,

⁴ *An infant is a child who is less than 18 months of age. (R.C. 5104.01(W).)*

⁵ *A toddler is a child who is at least 18 months of age but less than age three. (R.C. 5104.01(QQ).)*

⁶ *A preschool child is a child who is age three or older but is not a school child. (R.C. 5104.01(HH).)*

⁷ *A school child is a child who is enrolled in or is eligible to be enrolled in a grade of kindergarten or above but is less than age 15. (R.C. 5104.01(LL).)*

however, change "border state child day-care provider" to "border state child care provider."⁸

Restriction on licensing centers and type A homes

(R.C. 5104.03)

The bill prohibits the Director of Job and Family Services from issuing a provisional license⁹ or license, or renewing a license, for a child day-care center or type A family day-care home if the Director, based on documentation provided by the appropriate county department of job and family services, determines all of the following:

- (1) The applicant previously had been certified as a type B family day-care home;
- (2) The county department revoked that certification;
- (3) The revocation was based on the applicant's refusal or inability to comply with the criteria for certification;
- (4) The refusal or inability resulted in a risk to the health or safety of children.

⁸ *A border state child care provider is a child care provider located in a state bordering Ohio that is licensed, certified, or otherwise approved by that state to provide child care. (R.C. 5104.01(D).) State law authorizes an individual who is eligible for publicly funded child care to receive publicly funded child care from a border state child care provider if the individual resides in an Ohio county that borders the state in which the provider is located. (R.C. 5104.31.)*

⁹ *The Director of Job and Family Services issues a provisional license to a child day-care center or type A family day-care home if the Director, after investigating and inspecting the center or home, determines that the center or home complies with the licensing requirements. The provisional license is good for six months unless earlier revoked. The Director is required to investigate and inspect the center or home at least once during operation under the provisional license and, if the Director determines that the center or home meets the licensing requirements, issue a regular license that is effective for two years from the date of issuance of the provisional license. (R.C. 5104.03.)*

Certification of type B family day-care homes

(R.C. 5104.11)

Under current law, a county director of job and family services is required to inspect after receipt of an application for certification from a type B family day-care home. The bill clarifies that the county director is to inspect the home.¹⁰

If a type B family day-care home complies with state law governing child care and any applicable rules adopted under that law, a county department of job and family services must certify the home to provide publicly funded child care.¹¹ The bill provides that, on receipt of an application for certification of a type B home or renewal of a certificate, a county department must request from a public children services agency information concerning any abuse or neglect report of which the applicant is the subject.¹² The county department is required to consider any information provided by the public children services agency under the bill (see "Information from public children services agencies"). If the county department determines that the information, when viewed within the totality of the circumstances, reasonably leads to the conclusion that the applicant may endanger

¹⁰ *The inspection requirement may be waived if certain requirements are met. The requirements are that (1) the type B family day-care home seeks limited certification, (2) the provider and caretaker parent verify in writing that minimum health and safety requirements are being met in the home, and (3) the provider provides child care to certain children only. The children must be (1) eligible children who are great-grandchildren, grandchildren, nieces, nephews, or siblings of the provider, (2) eligible children whose caretaker parent is a grandchild, child, niece, nephew, or sibling of the provider, or (3) children of the same caretaker parent who is a friend of the provider. (R.C. 5104.011(G)(1).)*

¹¹ *The Director of Job and Family Services or a county director of job and family services is permitted to contract with a government entity or a private nonprofit entity for that entity to inspect and certify type B family day-care homes.*

¹² *Continuing law not affected by the bill requires certain individuals who, in an official or professional capacity, know or suspect that a child under age 18 or a mentally retarded, developmentally disabled, or physically impaired child under age 21 has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child to immediately report that knowledge or suspicion to certain officials. Individuals who must make the report include attorneys, health care professionals, and school teachers. (R.C. 2151.421.)*

the health, safety, or welfare of children, the county department must deny the application for certification or renewal or revoke the certification.¹³

Information from public children services agencies

(R.C. 5153.175)

The bill requires a public children services agency to promptly provide to the Department of Job and Family Services or a county department of job and family services any information the agency determines to be relevant for the purposes of evaluating the fitness of a person who has applied for licensure or license renewal of a type A family day-care home or certification or certificate renewal of a type B family day-care home. The information to be given is to include (1) a summary report of the chronology of abuse and neglect reports made under state law of which the person is the subject and the final disposition of the investigation of the reports or, if the investigations have not been completed, the status of the investigations and (2) any underlying documentation concerning those reports.

The bill prohibits a public children services agency from including in the information the name of the person or entity that made the report or participated in the making of the report of child abuse or neglect.

Inspections of child care providers

(R.C. 5104.011(J)(6), 5104.04(B), 5104.11, and 5104.12)

The Department of Job and Family Services is required to investigate a child day-care center or type A family day-care home on receipt of a complaint that the center or home is out of compliance with the requirements of state law governing child care or rules adopted pursuant to that law. A county director of job and family services is required, on receipt of a complaint, to investigate a

¹³ *The bill defines "public children services agency" as either an entity separate from the county department or the part of the county department that serves as the county's public children services agency, as appropriate. It is not clear why the bill provides this definition, however, because current law not affected by the bill defines public children services agency for every section of the Revised Code. Under that definition, a public children services agency is an entity specified under current law that has assumed the powers and duties of the children services function prescribed in current law for a county. The entities so specified are (1) a county children services board, (2) a county department of job and family services, and (3) a private or government entity designated by a board of county commissioners to be the public children services agency. (R.C. 5153.01 and 5153.02.)*

certified type B family day-care home or home of a child receiving publicly funded child care from an in-home aide. Current law provides that the Department and a county director is permitted, but not required, to inspect the center or home as well as investigate it. The bill provides instead that the Department must inspect the center or type A home, and a county director must inspect the type B home or home of the child receiving publicly funded child care from an in-home aide, if the complaint alleges that a child suffered physical harm while receiving child care¹⁴ at the center or home or that the noncompliance alleged in the complaint involved, resulted in, or poses a substantial risk of physical harm to a child receiving child care at the center or home. Otherwise, the Department or county director continues to be permitted, but not required, to inspect the center or home.¹⁵

The bill requires the Director of Job and Family Services to adopt rules pursuant to the Administrative Procedure Act (R.C. Chapter 119.) that establish standards for the training of individuals any county department of job and family services employs, with whom any county department contracts, or with whom the Director of Job and Family Services contracts, to inspect or investigate type B family day-care homes. The Department is required to provide training in accordance with those standards for those individuals.

Disqualifying offenses

Background

The Revised Code has two sections that prohibit persons who have been convicted of or pleaded guilty to certain offenses from owning or operating a child day-care center or type A or type B family day-care home.

¹⁴ *Regarding in-home aides, the inspection is required if the child who allegedly suffered physical harm was receiving publicly funded child care.*

¹⁵ *The bill provides that state law governing the Department of Job and Family Services inspecting a child day-care center or type A family day-care home on receipt of a complaint and state law governing a county director of job and family services inspecting a type B family day-care home or in-home aide on receipt of a complaint, does not limit, restrict, or negate (1) any duty of the Department or a county director to inspect a center or home that otherwise is imposed under state law governing the licensure of centers and type A homes or certification of type B homes or in-home aides or (2) any authority of the Department or a county director to inspect a center or home that otherwise is granted under such state law when the Department or county director believes the inspection is necessary and it is permitted under the grant.*

The first section, R.C. 5104.013, prohibits the Director of Job and Family Services from licensing a child day-care center or type A family day-care home and a county director of job and family services from certifying a type B family day-care home if a person for whom a criminal records check is required in connection with the center or home previously has been convicted of or pleaded guilty to certain offenses.¹⁶ The prohibition does not apply if the person meets rehabilitation standards specified in rules. The persons for whom a criminal records check is required are (1) the owner, licensee, and administrator of a child day-care center or type A home, (2) the authorized provider¹⁷ of a certified type B home, and (3) a person age 18 or older who resides in a type A or type B home.

The second section, R.C. 5104.09, prohibits an individual who has been convicted of or pleaded guilty to certain offenses from owning or operating a child

¹⁶ *The following are the disqualifying offenses: aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, failing to provide for a functionally impaired person, aggravated menacing, patient abuse or neglect, kidnapping, abduction, criminal child enticement, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, importuning, voyeurism, public indecency, compelling prostitution, promoting prostitution, procuring, prostitution or prostitution after a positive HIV test, disseminating matter harmful to juveniles, pandering obscenity, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, illegal use of minor in nudity-oriented material or performance, aggravated robbery, robbery, aggravated burglary, burglary, unlawful abortion, endangering children, contributing to unruliness or delinquency of a child, domestic violence, carrying a concealed weapon, having weapons while under disability, improperly discharging firearm at or into habitation or a school safety zone, corrupting another with drugs, trafficking in drugs, illegal manufacture of drugs or cultivation of marihuana, funding of drug or marihuana trafficking, illegal administration or distribution of anabolic steroids, placing harmful objects in food or confection, the former offense of child stealing as it existed before July 1, 1996, interference with custody if such offense would have been a violation of child stealing as it existed before July 1, 1996, drug possession that is not a minor drug possession offense, and the former offense of felonious sexual penetration. A violation of an existing or former law of this state, another state, or the United States that is substantially equivalent to any of those offenses or violations is also a disqualifying offense.*

¹⁷ *An authorized provider is a person authorized by a county director of job and family services to operate a certified type B family day-care home. However, a county director is required to conduct a criminal records check of the provider as part of the process of certifying the type B home. It is not clear why state law provides for a county director to request a criminal records check of an authorized provider of a type B home when the provider cannot become authorized until the criminal records check is completed.*

day-care center, type A home, or certified or uncertified type B home.¹⁸ Section 5104.09 also prohibits an individual who has been convicted of or pleaded guilty to any of the specified offenses from being certified as an in-home aide. In contrast to R.C. 5104.013, there is no exception in R.C. 5104.09 for individuals who meet rehabilitation standards.

New disqualifying offenses added

(R.C. 5104.013 and 5104.09)

The bill adds more disqualifying offenses to both R.C. 5104.013 and 5104.09. The following offenses are added to both sections: theft; unauthorized use of a vehicle; unauthorized use of property; unauthorized use of computer, cable, or telecommunication property; possession or sale of cable television device; telecommunications fraud; unlawful use of telecommunications device; passing bad checks; misuse of credit cards; forgery; forging identification cards or selling or distributing forged identification cards; criminal simulation; making or using slugs; trademark counterfeiting; Medicaid fraud; defrauding a livery or hostelry; tampering with records; securing writings by deception; personating an officer; unlawful display of the emblem of a law enforcement agency or an organization of law enforcement officers; defrauding creditors; illegal use of food stamps or WIC program benefits; insurance fraud; workers' compensation fraud; identify fraud; perjury; falsification; falsification in a theft offense; falsification to purchase a firearm; conspiracy; and attempt to commit, or complicity in, a disqualifying offense specified in current law (but not an offense the bill adds to the list of disqualifying offenses). The bill also makes a second violation of the prohibition against driving while under the influence of alcohol or drugs (DUI) within five years of the date of application for license or certification a cause for disqualification under R.C. 5104.013 and a second DUI violation within five years of the date of operation of a center or home or two DUI violations during operation of a center or home a cause for disqualification under R.C. 5104.09. A violation of an existing or former law of this state, another state, or the United States that is substantially equivalent to any of the offenses the bill adds is also a disqualifying offense.

¹⁸ *Except as follows, R.C. 5104.09 specifies the same disqualifying offenses as R.C. 5104.013: (1) interference with custody if such offense would have been a violation of child stealing as it existed before July 1, 1996, is not included in R.C. 5104.09, (2) a violation of an existing or former ordinance of a municipal corporation that is substantially equivalent to any of the specified offenses is included in R.C. 5104.09, and (3) menacing, extortion, aggravated arson, arson, disrupting public services, vandalism, inciting to violence, aggravated riot, riot, inducing panic, intimidation, escape, aiding escape, and resistance to authority are included in the offenses specified in R.C. 5104.09.*

In contrast to the disqualifying offenses in current law, the disqualifying offenses that the bill adds to R.C. 5104.013 do not apply to a person age 18 or older who resides in a type A or type B family day-care home unless the person is the owner, licensee, administrator, or authorized provider. This means that a home may be licensed or certified if such an individual has been convicted of or pleaded guilty to any of the disqualifying offenses added by the bill but not any of the offenses specified in current law. Also, the disqualifying offenses that the bill adds to R.C. 5104.09 are not applicable to an individual seeking certification as an in-home aide. Therefore, an individual may obtain certification as an in-home aide if the individual has been convicted of or pleaded guilty to any of the disqualifying offenses added by the bill but not any of the offenses specified in current law.

Rehabilitation standards

(R.C. 5104.013 and 5104.09)

Current law requires the Director of Job and Family Services to adopt rules pursuant to the Administrative Procedure Act (R.C. Chapter 119.) to implement R.C. 5104.013, including rules specifying exceptions to the disqualification for persons who have been convicted of a disqualifying offense but who meet rehabilitation standards set by the Department. The bill requires the Director to also adopt rules to implement R.C. 5104.09, including rules specifying exceptions for persons who meet rehabilitation standards set by the Department. This makes R.C. 5104.013 and 5104.09 more consistent by providing that both sections have exceptions for persons meeting the rehabilitation standards set by rules. However, the bill does not require that the rehabilitation standards be the same for both sections.

Bureau of Criminal Identification and Investigation

(R.C. 109.572 and 5104.013)

The Director of Job and Family Services and county directors are required to request that the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) conduct the criminal records check required by R.C. 5104.103.¹⁹ The bill provides that if a person who is the subject of a criminal

¹⁹ *The bill amends R.C. 109.572 to require the Superintendent of BCII to determine, when conducting a criminal records check pursuant to R.C. 5104.013, whether any information exists that indicates that an owner, licensee, or administrator of a child day-care center or type A family day-care home or an authorized provider of a type B family day-care home has been convicted of or pleaded guilty to any of the offenses added by the bill to the list of disqualifying offenses.*

records check under that section does not present proof that the person has been an Ohio resident for the five-year period immediately prior to the date the criminal records check is requested or does not provide evidence that within that five-year period the Superintendent of BCII has requested information about the person from the Federal Bureau of Investigation (FBI) in a criminal records check, the Superintendent must be requested to obtain information from the FBI as a part of the criminal records check. Such a request may be made, but is not required, if the person who is the subject of the criminal records check presents proof that the person has been an Ohio resident for that five-year period.

Statement attesting to no disqualifying offenses

(R.C. 5104.09)

The criminal records check required by R.C. 5104.09 does not provide for the Superintendent of BCII to determine whether a person subject to the check has been convicted of or pled guilty to any of the disqualifying offenses. Instead, that section requires "each authorized provider" to sign a statement on forms prescribed by the Director of Job and Family Services attesting that the provider has not been convicted of or pled guilty to any of the disqualifying offenses. The bill requires an authorized provider to attest, using the forms prescribed by the Director, that the provider has not been convicted of or pled guilty to any disqualifying offense that is specified in current law or added by the bill.

Condition on receiving limited certification

(R.C. 5104.011)

Current law requires that rules the Director of Job and Family Services adopts governing the certification of type B homes include procedures, standards, and other necessary provisions for granting limited certification to type B homes that are operated by (1) persons who provide child care for eligible children who are great-grandchildren, grandchildren, nieces, nephews, or siblings of the provider or for eligible children whose caretaker parent is a grandchild, child, niece, nephew, or sibling of the provider or (2) persons who provide child care for eligible children all of whom are the children of the caretaker parent. A provider is to be granted provisional limited certification on signing a declaration under oath attesting that the provider meets the standards for limited certification. Provisional limited certification remains in effect for no more than 60 calendar days. A county department is required to inspect the home before the provisional limited certification's expiration²⁰ and, if the provider meets the requirements for

²⁰ The inspection is not required for certain providers if the provider and caretaker parent verify in writing to the county department that minimum health and safety

limited certification, grant the home limited certification. The bill provides that the requirement for the county department to grant the limited certification is conditioned on there being no disqualifying offenses.²¹

Child care disclosure requirements

Misrepresentation by a child care provider

(R.C. 2919.224)

The bill prohibits a child care provider²² from knowingly misrepresenting any factor or condition that relates to the provision of child care and substantially affects the health or safety of any child in that provider's facility or receiving child care from that provider to any of the following:

- (1) A parent, guardian, custodian, or other person responsible for the care of a child in the provider's facility or receiving child care from the provider;
- (2) A parent, guardian, custodian, or other person responsible for the care of a child who is considering the provider as a child care provider for the child;
- (3) A public official responsible for issuing the provider a license or certificate to provide child care;
- (4) A public official investigating or inquiring about the provision of child care by the provider;

requirements are being met in the home. This is applicable to providers who (1) provide child day-care for eligible children who are great-grandchildren, grandchildren, nieces, nephews, or siblings of the provider or for eligible children whose caretaker parent is a grandchild, child, niece, nephew, or sibling of the provider or (2) provide child day-care for eligible children all of whom are the children of the caretaker parent who is a friend of the provider.

²¹ *The bill provides that the criminal records check is no longer waived when a provider has the inspection requirement waived by verifying in writing that minimum health and safety requirements are being met in the home.*

²² *"Child care provider" means any of the following (R.C. 2919.223(C)):*

- (1) An owner, provider, administrator, or employee of, or volunteer at, a child care facility;*
- (2) An in-home aide;*
- (3) A person who represents that the person provides child care.*

(5) A peace officer.²³

The bill specifies that, for purposes of this prohibition, "any factor or condition that relates to the provision of child care" includes, but is not limited to, the following:

(1) The person or persons who will provide child care to the child of the parent, guardian, custodian, or other person responsible for the care of the child, or to the children in general;

(2) The qualifications to provide child care of the child care provider, of a person employed by the provider, or of a person who provides child care as a volunteer;

(3) The number of children to whom child care is provided at one time or the number of children receiving child care in a child care facility or school at one time;

(4) The conditions or safety features of the care facility or school;

(5) The area of the child care facility or school in which child care is provided.

A person who violates this prohibition is guilty of "misrepresentation by a child care provider," a misdemeanor of the first degree.

Failure of a child care home to disclose death or serious injury

(R.C. 2921.225)

The bill enacts two separate provisions that prohibit an owner, provider, or administrator of a type A or type B family day-care home from failing to disclose to specified persons in certain circumstances a death or serious injury suffered by a child in the home or under the care of the owner, provider, or administrator.

Notice to prospective users of a child care home. The bill prohibits the owner, provider, or administrator of a type A or type B family day-care home, knowing that the event described below in (1) or (2) has occurred, from accepting a child into the home without first disclosing to the parent, guardian, custodian, or

²³ "Peace officer" means a police officer, sheriff or deputy sheriff, highway patrol officer, or any of a number of other law enforcement officers specified in the Revised Code (R.C. 2919.223).

other person responsible for the care of that child any of the following that has occurred:

(1) A child died while under the care of the home or while receiving child care from the owner, provider, or administrator, or died as a result of injuries suffered while under the care of the home or while receiving child care from the owner, provider, or administrator.

(2) Within the preceding ten years, a child suffered injuries while under the care of the home or while receiving child care from the owner, provider, or administrator and those injuries led to the child being hospitalized for more than 24 hours.

The bill states that this prohibition does not require more than one person to make disclosures to the same parent, guardian, custodian, or other person responsible for the care of a child regarding any single injury or death for which disclosure is required.

Notice at the time of the death or serious injury. **Prohibition.** The bill prohibits the owner, provider, or administrator of a type A or type B family day-care home from failing to provide notice in accordance with the provisions described below in "**Manner of giving the notice**" to the persons and entities specified below in "**Persons to be given the notice,**" of any of the following that occurs:

(1) A child who is under the care of the home or is receiving child care from the owner, provider, or administrator dies while under the care of the home or while receiving child care from the owner, provider, or administrator or dies as a result of injuries suffered while under the care of the home or while receiving child care from the owner, provider, or administrator;

(2) A child who is under the care of the home or is receiving child care from the owner, provider, or administrator is hospitalized for more than 24 hours as a result of injuries suffered while under the care of the home or while receiving child care from the owner, provider, or administrator.

The bill provides that this prohibition does not require more than one person to give notices to the same parent, guardian, custodian, other person responsible for the care of the child, public children services agency, peace officer, or child fatality review board regarding any single injury or death for which disclosure is required.

Persons to be given the notice. The bill provides that an owner, provider, or administrator of a type A or type B family day-care home must provide the notices described above to each of the following:

(1) For each child who, at the time of the injury or death for which the notice is required, is receiving or is enrolled to receive child care at the home or from the owner, provider, or administrator, to the parent, guardian, custodian, or other person responsible for the care of the child;

(2) If the notice is required as the result of the death of a child to the public children services agency of the county in which the home is located or the child care was given, a municipal or county peace officer in the county in which the child resides or in which the home is located or the child care was given, and the child fatality review board appointed under existing R.C. 307.621 (not in the bill) that serves the county in which the home is located or the child care was given.

Manner of giving the notice. The bill specifies that an owner, provider, or administrator of a type A or type B family day-care home must provide the notices required under the provisions described above in "**Prohibition**" and "**Persons to be given the notice**" not later than 48 hours after the child dies or, regarding a child who is hospitalized for more than 24 hours, not later than 48 hours after the child suffers the injuries. If a child is hospitalized for more than 24 hours as a result of injuries suffered while under the care of the home, and the child subsequently dies as a result of those injuries, the owner, provider, or administrator must provide separate notices as described above under "**Prohibition**" and "**Persons to be given the notice**" regarding both the injuries and the death. All notices provided under those provisions must state that the death or injury occurred.

Penalty. A person who violates either of the prohibitions described above is guilty of "failure of a type A or type B family day-care home to disclose the death or serious injury of a child," a misdemeanor of the fourth degree.

Immunity. The bill provides that an owner, provider, or administrator is not subject to civil liability solely for making a required disclosure.

Failure of a child day-care center to disclose death or serious injury

(R.C. 2919.227 and 5104.11)

Notice to prospective users of a child day-care center. The bill requires a child day-care center licensee²⁴ to provide certain information to the parent,

²⁴ "Child day-care center licensee" means the owner of a child day-care center licensed under the Revised Code who is responsible for ensuring the center's compliance with it and rules adopted pursuant to it (R.C. 2919.223(B)).

guardian, custodian, or other person responsible for the care of a child before accepting the child into the center, if the information is requested. The licensee must provide information regarding (1) the injuries to children, as reported pursuant to rules adopted by the Department of Job and Family Services,²⁵ that have occurred at the center on or after April 1, 2003, or the date that is two years before the date the information is requested, whichever date is more recent, and (2) the number of each type of injury to children that occurred during that period.

Under the bill, a child day-care center licensee must also notify the parent, guardian, custodian, or other person responsible for the care of a child who seeks to enroll the child in the child day-care center if either of the following have occurred within the 15 years preceding the date on which the enrollment is sought:

- (1) A child died while under the care of the center;
- (2) A child died while receiving child care from the owner, provider, or administrator of the center; or
- (3) A child died as a result of injuries suffered while under the care of the center or while receiving child care from the owner, provider, or administrator.

The bill requires a child day-care center licensee to keep a copy of any information provided pursuant to this provision at the center for three years.

Notice at the time of a child's death. In addition to the information that must be provided before a child may be accepted into a child care center, the bill requires that notice of certain events be provided to other persons. If a child dies (1) while under the care of the center, (2) while receiving child care from the owner, provider, or administrator of the center, or (3) as a result of injuries suffered while under the care of the center or while receiving child care from the owner, provider, or administrator, the licensee must notify all of the following:

- (1) The parent, guardian, custodian, or other person responsible for the care of each child that is receiving or is enrolled to receive child care from the center;
- (2) The public children services agency of the county in which the center is located or the child care was given;
- (3) A municipal or county peace officer in the county in which the child resides, in which the center is located, or in which the child care was given; and

²⁵ *The bill requires the Department to adopt rules prescribing a procedure for reporting injuries of children that occur at child day-care centers (R.C. 5104.011).*

(4) The child fatality review board that serves the county in which the center is located or the child care was given.

The bill requires that notices be provided within 48 hours of the child's death. A notice provided pursuant to this provision must state that the death occurred.

A person who violates either of these provisions is guilty of "failure of a child day-care center to disclose the death or serious injury of a child," a misdemeanor of the fourth degree.

Child care disclosure form

(R.C. 2919.226)

The bill provides that, if a child care provider (1) accurately answers the questions on a child care disclosure form that is in substantially the form set forth in the statute, (2) presents the form either to a parent, guardian, custodian, or other person responsible for the care of a child who is in the provider's facility or receiving child care from the provider or to a parent, guardian, custodian, or other person responsible for the care of a child who is considering the provider as a child care provider for the child, and (3) obtains the signature of the person to whom it was presented on the acknowledgement in the form, to the extent that the information set forth on the form is accurate, the provider who presents the form is not subject to prosecution under the bill's prohibition described above in "**Misrepresentation by a child care provider**" regarding the presentation of that information to that person. Also, the owner, provider, or administrator of a type A or type B family day-care home is required to make a disclosure of the type described above may comply with those provisions by accurately answering the questions on a child care disclosure form that is in substantially the form described in statute, obtaining the signature of the person to whom it was presented on the acknowledgment, and providing a copy of the completed form to the parent, guardian, custodian, or other person responsible for the care of a child and to whom disclosure is to be made under that provision. The use of the form set forth in the statute is discretionary.

If a child care provider (1) accurately answers the questions on a disclosure form that is substantially similar to the form described in the statute, (2) presents the form to a parent, guardian, custodian, or other person responsible for the care of a child who is in the provider's facility or receiving child care from the provider, or who is considering the provider as a child care provider for the child, and (3) obtains the signature of the person to whom it was presented on the acknowledgment in the form, to the extent that the information set forth on the form is accurate, the form is sufficient for the purposes described in the preceding

paragraph. An owner, provider, or administrator of a type A or type B family day-care home who accurately answers the questions on such a disclosure form, provides a copy of the completed form to the parent, guardian, custodian, or other person responsible for the care of a child and to whom disclosure is to be made, and obtains the signature of the person to whom the form was presented on the acknowledgment in the form complies with the bill's requirements. The bill specifies that, if an owner, provider, or administrator uses the disclosure form, leaving a portion of it blank does not constitute a misrepresentation for the purposes of the offense of "misrepresentation by a child care provider" but may constitute the offense of "failure of a type A or type B family day-care home to disclose the death or serious injury of a child." An owner, provider, or administrator who completes the disclosure form and provides a copy of the form to the persons described in those provisions may retain a copy of the completed form.

The bill specifies that, to be sufficient for the purposes describe in the bill, a child care disclosure form must be in substantially the following form:

"CHILD CARE DISCLOSURE FORM

Please Note: This form contains information that is accurate only at the time the form is given to you. The information provided in this form is likely to change over time. It is the duty of the person responsible for the care of the child to monitor the status of child care services to ensure that those services remain satisfactory. If a question on this form is left unanswered, the child care provider makes no assertion regarding the question. Choosing appropriate child care for a child is a serious responsibility, and the person responsible for the care of the child is encouraged to make all appropriate inquiries. Also, in acknowledging receipt of this form, the person responsible for the care of the child acknowledges that in selecting the child care provider the person is not relying on any representations other than those provided in this form unless the child care provider has acknowledged the other representations in writing.

1. What are the names and qualifications to provide child care of: (a) the child care provider, (b) the employee who will provide child care to the applicant child, (c) the volunteer who will provide child care to the applicant child, and (d) any other employees or volunteers of the child care provider? (attach additional sheets if necessary):

.....
.....
.....



2. What is the maximum number of children to whom you provide child care at one time? (If children are divided into groups or classes, please describe the maximum number of children in each group or class and indicate the group or class in which the applicant child will be placed.):

.....
.....
.....

3. Where in the home will you provide child care to the applicant child?:

.....
.....
.....

4. Has a child died while in the care of, or receiving child care from, the child care provider? (Yes/No)

Description/explanation (attach additional sheets if necessary)

.....
.....
.....

5. Has a child died as a result of injuries suffered while under the care of, or receiving child care from, the child care provider? (Yes/No)

Description/explanation (attach additional sheets if necessary)

.....
.....
.....

6. Within the preceding ten years, has a child suffered injuries while under the care of, or receiving child care from, the child care provider that led to the child being hospitalized for more than 24 hours? (Yes/No)

Description/explanation (attach additional sheets if necessary)

.....
.....
.....



.....
Signature of person completing form

.....
Date

.....
Name of person completing form
(Typed or printed)

.....
Title of person completing form
(Typed or printed)

Acknowledgement:

I hereby acknowledge that I have been given a copy of the preceding document and have read and understood its contents. I further acknowledge that I am not relying on any other representations in selecting the child care provider unless the child care provider has acknowledged the other representations in writing.

.....
Person receiving the form

.....
Date"

Operation of a center or type A home without a license

(R.C. 5104.04 (H) and 5104.99)

Current law provides that the penalty for operating, establishing, managing, conducting, or maintaining a child day-care center or type A family day-care home without a license is a fine of not less than \$100 nor more than \$500 for each offense. The bill provides instead that whoever violates the prohibition is to be fined, for each offense, not less than \$100 nor more than \$500 multiplied by the number of children receiving child care at the center or home that either exceeds the number of children to which a type B family day-care home may provide child care or, if the offender is a licensed type A home that is operating as an unlicensed child day-care center, exceeds the license capacity of the type A home.

In addition to fining an offender, a court is required to order the offender, if the offender has not been convicted of or pleaded guilty to violating the prohibition any previous times, to reduce the number of children to which the offender provides child care to a number that does not exceed either the number of children to which a type B home may provide child care or, if the offender is a licensed type A home operating as an unlicensed child day-care center, the license capacity of a type A home. If the offender has been convicted of or pleaded guilty



to violating the prohibition one or more previous times, the court is required to order the offender to cease the provision of child care to any person until the offender obtains a child day-care center or type A home license, as appropriate. Additionally, the bill provides that an offender who has been convicted of or pleaded guilty to a violation of the prohibition two previous times is guilty of a misdemeanor of the first degree and the court may impose another fine in addition to the regular fine discussed above, provided that the total amount of the fines does not exceed \$1,000 (the maximum fine state law authorizes for a misdemeanor of the first degree). The bill provides that the offender is guilty of a felony of the fifth degree if the offender previously has been convicted of or pleaded guilty to three or more violations of the prohibition and the court may impose an additional fine, provided that the total amount of the fines does not exceed \$2,500 (the maximum fine state law authorizes for a felony of the fifth degree).

Current law requires the Department of Job and Family Services, on determination that a child day-care center or type A home is operating without a license, to notify a legal authority of the center or home's unlicensed operation.²⁶ On receipt of the notification, the legal authority is required to file a complaint in the court of common pleas of the county in which the center or home is located requesting that the court grant an order enjoining the owner from operating the center or home. The bill provides that the legal authority is to request an order enjoining the owner from operating the center or home in violation of the prohibition against operation without a license. In contrast to current law, this allows the center or home to continue to operate if it obtains the appropriate license.

Director to recommend standards for imposing sanctions

(R.C. 5104.011(J)(5))

The bill requires the Director of Job and Family Services to recommend standards for imposing sanctions on persons and entities that are licensed or certified under state law governing child care and that violate any provision of that law.²⁷ The standards must be based on the scope and severity of the violations. The Director is required to provide copies of the recommendations to the Governor, Speaker and Minority Leader of the House of Representatives, and

²⁶ *The legal authority to be notified is the Attorney General; prosecuting attorney of the county in which the center or home is located; or city attorney, village solicitor, or other chief legal officer of the municipal corporation in which the center or home is located.*

²⁷ *The bill does not establish a deadline for the Director to develop the recommendations.*

President and Minority Leader of the Senate. The Director must also make copies of the recommendations available on request to the public.

Providers receiving copies of rules

(R.C. 5104.011(J)(1), (2), and (3))

Current law requires the Director of Job and Family Services to provide a copy of each adopted rule governing the licensure of child day-care centers and type A family day-care homes to each licensee prior to the rule's effective date. The copy of the rule must be provided in either paper or electronic form. The bill requires that the Director provide the copy of the rule at least 30 days before the rule's effective date.

The Director of Job and Family Services is required by current law to provide each county director of job and family services an electronic copy of each adopted rule governing the certification of type B family day-care homes and in-home aides prior to the rule's effective date. County directors are required to provide copies of the adopted rule to each authorized provider of a type B home and in-home aide. The bill requires the Director to provide a copy of the adopted rule at least 45 days before the rule's effective date and the county directors to provide a copy of the rule to each authorized provider and in-home aide at least 30 days before the rule's effective date. The bill further requires that the copy that the county directors provide the authorized providers and in-home aides be either in paper or electronic form.

Advisory council

(R.C. 5104.08)

Current law establishes the Day-Care Advisory Council in the Department of Job and Family Services. The Council is required to assist the Department in the administration of state law governing child care and in the development of child care. The bill renames the Council the Child Care Advisory Council.

The Council currently has 18 voting members appointed by the Director of Job and Family Services with the approval of the Governor. The Directors of Job and Family Services, Health, and Commerce, the Superintendent of Public Instruction, and the State Fire Marshal serve as nonvoting members. The bill increases the voting membership to 22 and adds the Directors of Mental Health and Mental Retardation and Developmental Disabilities as nonvoting members.

The four new voting members are to represent county departments of job and family services.²⁸

Current law requires that at least six of the voting members *not* be employees or licensees of a child day-care center or type A family day-care home, providers operating a certified or uncertified type B family day-care home, or in-home aides. The bill adds employees and licensees of a head start program to this list.

The bill provides that a Council member is subject to removal by the Director of Job and Family Services for a willful and flagrant exercise of authority or power that is not authorized by law, for a refusal or willful neglect to perform any official duty as a member of the Council imposed by law, or for being guilty of misfeasance, malfeasance, nonfeasance, or gross neglect of duty as a member of the Council.

The bill requires that the Council have two co-chairpersons. One co-chairperson is to be the Director of Job and Family Services or the Director's designee, and the other co-chairperson is to be elected by the Council's members. The Council is required by the bill to meet as often as is necessary to perform its duties, provided that it must meet at least once in each quarter of each calendar year and at the call of the co-chairpersons. The co-chairpersons or their designees are required to send to each member a written notice of the date, time, and place of each meeting.

Under current law, the Council is required to make an annual report concerning the licensing, certification, and regulation of child care providers, the provision of publicly funded child care by border state child care providers, and the Council's recommendations concerning the regulation of child care providers and border state child care providers. The bill requires instead that the report address the availability, affordability, accessibility, and quality of child care and summarize the recommendations and plans of action that the Council has proposed to the Director during the preceding fiscal year. Whereas current law requires that a copy of the report be provided to the Director and others, the bill requires that the Council make the report to the Director and that the Director provide the copies to the others.²⁹

²⁸ *Under current law, at least two of the voting members of the Council are to represent county departments of job and family services. The bill increases this to at least six.*

²⁹ *Copies of the report are to be given to the Governor, Speaker and Minority Leader of the House of Representatives, President and Minority Leader of the Senate, and, on request, the public.*

The Director is authorized by the bill to adopt rules to implement state law governing the Council. The rules must be adopted pursuant to the Administrative Procedure Act (R.C. Chapter 119.).

Child day camp criminal records checks

Introduction

A child day camp is a program for school children that operates during one or more public school district's regular vacation periods or for no more than 15 weeks during the summer. A child day camp can only operate for seven hours a day, and must offer outdoor activities for each participating child during at least 50% of each day that children attend, weather permitting. (R.C. 5104.01(J).) Generally, child day camps must register with the Department of Job and Family Services (R.C. 5104.21).

Current law provides that when a person is under final consideration for employment in a position where the person would be responsible for a child's care in out-of-home-care, the employer must request that the Bureau of Criminal Identification and Investigation (BCII) conduct a criminal records check of the person being considered (R.C. 2151.86(A)(1)). Generally, the employer is not permitted to hire the person being considered if the person has been convicted of or pleaded guilty to a specified offense (R.C. 2151.86(C)(1)).³⁰

Oversight of the mandatory criminal records check requirement

The bill gives the Department of Job and Family Services the authority to conduct random sampling of registered child day camps to determine compliance with the records check requirement (R.C. 2151.861(A)).

The bill specifically prohibits a child day camp from failing to conduct required criminal records checks. In addition, the bill provides that if the Department determines that a child day camp has not complied with the records check requirement, it must consider imposing a civil penalty and must order the camp to initiate the required records check within a specified period. The civil penalty cannot exceed 10% of the camp's gross revenues for the full month preceding the month in which the violation occurred. If the camp was not in business for the entire month preceding the violation, the fine is \$500. (R.C. 2151.861(B)(1) and (2).)

³⁰ *The specified offenses include homicides, assaults, certain sex offenses, certain theft offenses, and certain drug offenses.*

If a child day camp fails to comply with the order to perform the records check and does not release the individual whose records check has not been performed, the Department must impose a civil penalty and again order that the records check be conducted within a specified period. This penalty cannot be less than the amount previously imposed, and may be up to twice the amount permitted to be assessed initially (described above). (R.C. 2151.861(B)(3).)³¹

Public notice

Under the bill, if the Department of Job and Family Services determines that a child day camp has failed to conduct a mandatory criminal records check, it may prominently post a notice at the camp stating that fact. In addition, the bill requires the Department to include on its web site a list of child day camps that the Department determines, from a random sample, have not conducted required criminal records checks. The Department must permit the camp to remove the sign and must remove the camp's name from the list once a camp demonstrates to the Department that it has either (1) requested that BCII conduct the records check and released the person who is the subject of the report if the person does not qualify for the position, or (2) released the individual whose check was not completed. (R.C. 2151.861(C), (D), and (E).)

Appeal of Department's decision

A child day camp can appeal to the common pleas court for the county in which the camp is located the Department's imposition of a civil penalty, order to conduct a background check, posting of a sign, or inclusion of a child day camp on the web site list of noncompliant camps (R.C. 2151.861(G)).

Eligibility for children enrolled in a Head Start program

(Section 2)

Current law³² provides that a family that has a child enrolled in a Head Start program and receives publicly funded child care for that child in a collaborative model at the same location is to continue to receive publicly funded child care

³¹ *The bill requires the Attorney General to commence a civil action, and prosecute that action to judgment, to collect civil penalties that are imposed on a child day camp for failure to conduct a mandatory criminal background check (R.C. 2151.861(F)).*

³² *R.C. 5104.381.*

until the end of the Head Start program year unless the caretaker parent fails to pay the required fee for publicly funded child care.³³ The bill repeals this law.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-12-03	p. 1159
Reported, S. Judiciary	05-26-04	p. 2004
Passed Senate (31-0)	05-26-04	p. 2060
Reported, H. Juvenile & Family Law	---	---

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³³ *This does not apply to a family that loses eligibility for cash assistance under Ohio Works First due to sanction or fraud.*