



Diana C. Fox

Bill Analysis
Legislative Service Commission

S.B. 155

125th General Assembly
(As Introduced)

Sens. Stivers, Goodman, Randy Gardner, Jacobson, Schuring, Spada, Austria, Armbruster, Mumper, Harris, DiDonato, Miller, Dann

BILL SUMMARY

- 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 a county department of job and family services from certifying a type B family day-care home if the owner, operator, or licensee of the center or type A home or the authorized provider of the type B home has been convicted of or pleaded guilty to any one of an expanded list of offenses.
- Prohibits a person from owning or operating a child day-care center, type A family day-care home, or type B family day-care home if the person has been convicted of or pleaded guilty to one of the offenses in that expanded list of offenses.
- Requires a county department of job and family services to request from the public children services agency ("PCSA") information concerning any abuse or neglect report made to the PCSA of which an applicant for type B family day-care certification is the subject and requires the department to deny certification if the information, when viewed within the totality of the circumstances, reasonably leads to the conclusion that the applicant may endanger the health, safety, or welfare of children.
- Mandates that a PCSA provide to a federal, state, or local government entity, including a job and family services agency, all information the PCSA determines relevant to the protection of children from abuse or neglect, notwithstanding any provision of the Revised Code that grants confidentiality to this information.

CONTENT AND OPERATION

Licensing and certification of certain day-care facilities

Existing law

Under existing law, the Director of Job and Family Services ("State JFS"), as part of the licensure of such centers and homes, is required to request a criminal records check from the Bureau of Criminal Identification and Investigation ("BCII") with respect to any owner, licensee, or administrator of a child day-care center or a type A family day-care home and any person 18 years of age or older who resides in a type A family day-care home. Additionally, the director of a county department of job and family services ("County JFS"), as part of the certification of such homes, is required to request a criminal records check from BCII with respect to any authorized provider of a certified type B family day-care home and any person 18 years of age or older who resides in a certified type B family day-care home. (R.C. 5104.013(A).)

The Director of State JFS is prohibited from granting a license to a child day-care center or type A family day-care center and the director of a County JFS is prohibited from certifying a type B family day-care home if the criminal records check for one of these individuals shows that the person previously has been convicted of or pleaded guilty to one of the following offenses (R.C. 5104.013(D)(1)):

(1) Aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, permitting child abuse, 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, prostitution, disseminating matter harmful to juveniles, pandering obscenity, pandering obscenity involving a minor, pandering sexually oriented matter involving a minor, illegal use of a minor in nudity-oriented material or performance, aggravated robbery, robbery, aggravated burglary, burglary, unlawful abortion, endangering children, contributing to unruliness of a child, domestic violence, carrying concealed weapons, having weapons while under disability, improperly discharging a firearm at or into habitation, 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 prior to July 1, 1996, interference with custody if such offense would have been a violation of child stealing as it

existed prior to July 1, 1996, drug possession that is not a minor drug possession offense, or the former offense of felonious sexual penetration.

(2) A violation of an existing or former law of Ohio, any other state, or the U.S. that is substantially similar to any of the offenses listed in (1), above.

However, the Director of State JFS is required to adopt rules that allow for the licensure or certification of certain child day-care centers, type A family day-care centers, and type B family day-care homes if persons who have been convicted of or pleaded guilty to any offense listed in (1) or (2), above, meet standards in regard to rehabilitation that are set by JFS (R.C. 5104.013(G)).

Operation of the bill

The bill additionally prohibits the Director of State JFS from licensing a child day-care center or type A family day-care home and the director of a County JFS from certifying a type B family day-care home if an owner, licensee, or administrator of a child day-care center or type A family day-care home or an authorized provider of a certified type B family day-care home previously has been convicted of or pleaded guilty to any of the following offenses (R.C. 5104.013(D)(2), conforming changes in R.C. 109.572(A)(9) and 5104.011(G)(1)(b)):

(1) Petty theft, theft, grand theft, aggravated theft, grand theft of a motor vehicle, theft of drugs, theft from an elderly person or disabled adult, unauthorized use of a vehicle, unauthorized use of property, unauthorized use of computer, cable, or telecommunication property, possession or sale of unauthorized device, telecommunications fraud, unlawful use of telecommunications device, passing bad checks, misuse of credit cards, forgery, forging identification cards, selling or distributing forged identification cards, criminal simulation, making or using slugs, trademark counterfeiting, Medicaid fraud, 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, attempt or complicity in committing one of the above-listed offenses or offenses listed above in paragraph (1) under "**Existing law**," or a second violation of state OVI or state OVUAC within five years of application for licensure or certification.

(2) A violation of an existing or former law of Ohio, any other state, or the U.S. that is substantially similar to the offenses listed above in (1).



The bill also requires the Superintendent of BCII, when conducting a records check with respect to any such licensure or certification, to determine whether any information exists that the person who is the subject of the records check has been convicted of or pleaded guilty to any offense listed in paragraph (1) or (2), above (R.C. 109.572(A)(9)).

Prohibition on employment of persons convicted of specified offenses

Existing law

Existing law prohibits a person from being certified as an in-home aide or being employed in any capacity in or owning or operating a child day-care center, type A family day-care home, type B family day-care home, or certified type B family day-care home if the person is convicted of or pleads guilty to an offense listed above in paragraph (1) of "**Existing law**" under "**Licensing and certification of certain day-care facilities.**" (R.C. 5104.09(A)(1)(a), conforming change in R.C. 5104.011(G).)

Additionally, under existing law the following persons must sign a statement attesting that the person has not been convicted of or pleaded guilty to one of these offenses and that no child has been removed from the person's home pursuant to R.C. 2151.353 (R.C. 5104.09(A)(2), (3), and (4)):

- (1) Each employee of a child day-care center and type A home;
- (2) Each person 18 years of age or older residing in a type A home;
- (3) Each in-home aide;
- (4) Each authorized provider;
- (5) Every person 18 years of age or older residing in a certified type B home;
- (6) Each administrator and licensee of a child day-care center or type A home.

Operation of the bill

The bill additionally prohibits a person from owning or operating a child day-care center, type A family day-care home, type B family day-care home, or certified type B family day-care home if the person has been convicted of or pleaded guilty to an offense listed above in paragraph (1) in "**Operation of the bill**" under "**Licensing and certification of certain day-care facilities.**" (R.C. 5104.09(A)(1)(b).)

To conform with these supplemental prohibitions on employment, the bill specifies that an authorized provider's, administrator's, and licensee's statement attesting that the person has not been convicted of or pleaded guilty to the listed offenses, also specify that the person has not been convicted of or pleaded guilty to the offenses listed above in paragraph (1) in "**Operation of the bill**" under "**Licensing and certification of certain day-care facilities.**" (R.C. 5104.09(A)(3) and (4).)

The bill directs the Director of State JFS to adopt rules pursuant to R.C. Chapter 119. that implement the law described in the two prior paragraphs including rules that allow for the certification and employment of certain individuals in child day-care centers and type A and B family day-care homes if the individual has been convicted of or pleaded guilty to an offense listed in R.C. 5104.09(A)(1)(a) or (b) but meets standards in regard to rehabilitation that are set by State JFS (R.C. 5104.09(D)).

Reports from the public children services agency when certifying a type B family day-care home

Under existing law, when a person submits an application for certification of a type B family day-care home the director of the County JFS is required to inspect the home to ensure that the home is safe and sanitary.¹ If the home complies with the requirements of R.C. Chapter 5104. and any rules adopted pursuant to the Chapter, the County JFS must certify the type B family day-care home to provide publicly funded child day-care. Certification is generally valid for 12 months. (R.C. 5104.11.)

The bill adds another requirement before the County JFS may certify a type B family day-care home. When the County JFS receives an application for certification or renewal of certification as a type B family day-care home, the bill requires the County JFS to request from the public children services agency ("PCSA")² information concerning any abuse or neglect report made to the PCSA of which the applicant is the subject. The County JFS is to consider this information. If the County JFS determines that the information, when viewed within the totality of the circumstances, reasonably leads to the conclusion that the applicant may endanger the health, safety, or welfare of children, the bill requires

¹ *The County JFS is authorized to contract with another government entity or private nonprofit entity for an inspection of a type B child day-care home (R.C. 5104.11(A)(1)).*

² *The bill defines a "public children services agency" as either an entity separate from the County JFS or the part of the County JFS that serves as the county's public children services agency, as appropriate (R.C. 5104.11(A)(2)).*

the County JFS to deny the application for certification or renewal of application or to revoke the certification of a type B provider. (R.C. 5104.11(A)(2).)

Confidentiality of PCSA reports

The bill states that notwithstanding any section of the Revised Code pertaining to confidentiality, including R.C. 2151.421 (reports of child abuse or neglect to the PCSA) and R.C. 5153.17 (confidentiality of PCSA investigations), a PCSA is required to promptly provide to any federal, state, or local government entity, or any agent of the entity, with a need for the information, all information the PCSA determines relevant to the protection of children from abuse or neglect. Included within this duty, the bill requires a PCSA to promptly provide to the County JFS or State JFS the following information if the State or County JFS requests it for the purposes of evaluating the fitness of a person who has applied for licensure or renewal of licensure as a type A family day-care home or certification or renewal of certification as a type B family day-care home (R.C. 5153.175):

(1) A summary report of the chronology of abuse and neglect reports made pursuant to R.C. 2151.421 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;

(2) Any underlying documentation concerning these reports.

The bill, however, prohibits the PCSA from including in the information provided to the State or County JFS the name of the person or entity that made the report or participated in the making of the report of child abuse or neglect.

Definitions pertinent to the bill (not in the bill)

Administrator

"Administrator" means the person responsible for the daily operation of a center or type A home. The administrator and the owner may be the same person. (R.C. 5104.01(A).)

Authorized provider

"Authorized provider" means a person authorized by a county director of job and family services to operate a certified type B family day-care home (R.C. 5104.01(C)).

Certified type B family day-care home

"Certified type B family day-care home" and "certified type B home" mean a type B family day-care home that is certified by the director of the county department of job and family services pursuant to R.C. 5104.11 to receive public funds for providing child day-care pursuant to this chapter and any rules adopted under it (R.C. 5104.01(F)).

Child day-care center

"Child day-care center" and "center" mean 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 seven to 12 children at one time. 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 in this determination. "Child day-care center" and "center" do 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. (R.C. 5104.01(L).)

In-home aide

"In-home aide" means a person certified by a county director of job and family services pursuant to R.C. 5104.12 to provide publicly funded child day-care to a child in a child's own home pursuant to R.C. Chapter 5104. and any rules adopted under it (R.C. 5104.01(X)).

Licensee

"Licensee" means the owner of a child day-care center or type A family day-care home that is licensed pursuant to R.C. Chapter 5104. and who is responsible for ensuring its compliance with R.C. Chapter 5104. and rules adopted pursuant to the Chapter (R.C. 5104.01(BB)).

Type A family day-care home

"Type A family day-care home" and "type A home" mean 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 is provided for four to 12 children at one time if four or more children at one time are under two years of age. 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 in this calculation. "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" and "type A home" do not include any child day camp. (R.C. 5104.01(RR).)

Type B family day-care home

"Type B family day-care home" and "type B home" mean 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. 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 in this definition. "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" and "type B home" do not include any child day camp. (R.C. 5104.01(SS).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-20-03	p. 1203

S0155-I-125.doc/jc

