

BUREAU OF EARLY CHILDHOOD SERVICES

POLICY STATEMENT

ID NUMBER: 99-2

TOPIC: Procedures for the Implementation of Jeremy and Julia's Law

MODALITIES IMPACTED: FDC, GFDC, DCC and SACC

APPLICABLE REGULATIONS: Parts 417, 416, 418 and 414

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EFFECTIVE: Immediately

THIS POLICY STATEMENT IS EFFECTIVE IMMEDIATELY AND CANCELS ALL PREVIOUS MEMOS OR STATEMENTS ON THIS TOPIC.

The purpose of this policy statement is to clarify the impact of Sections 120.01 and 260.30 of the Penal Law, known as the Jeremy Fiedeholtz and Julia Haas Safe Day Care Act (Jeremy and Julia's Law). This policy will address both the identification of situations which would constitute violations of this law, and the procedure to be used by registrars, licensers and other OCFS staff in making a law enforcement referral.

WHAT ARE THE PROVISIONS OF JEREMY AND JULIA'S LAW?

Jeremy and Julia's Law establishes two levels of criminal activity for day care providers:

1. According to Section 260.30 of the Penal Law, a provider, or anyone holding themselves out as a day care provider, is subject to prosecution for willfully and intentionally misrepresenting to parents, State or local officials having jurisdiction over day care providers, or a police officer or peace officer, the facts pertaining to themselves as a provider. These facts include, but are not limited to:

- the number of children in care, where that number either violates the provisions of Section 390 of the Social Services Law pertaining to the number of children impacting upon the need for registration or licensure, or exceeds the maximum capacity stated on the

registration or license;

- the area of the facility or home which is used for day care; or
- the credentials or qualifications of the provider, assistant, employee or volunteer.

This section of the law applies when the misrepresentation substantially places the health or safety of a child at risk. The misrepresentation by a child day care provider is a Class A misdemeanor.

2. According to Section 120.01 of the Penal Law, a provider, or anyone holding themselves out as a day care provider, is subject to prosecution for "reckless assault of a child" when a provider or an employee of a provider recklessly causes serious physical injury to a child under eleven years of age who is under the provider's care. The reckless assault of a child by a child day care provider is a Class E felony.

DOES THIS MEAN THAT A PROVIDER CAN BE ARRESTED FOR BEING OUT OF COMPLIANCE?

Generally, a provider would not be in violation of this law merely for being out of compliance with the regulations. Chapter 600 of the Laws of 1998 does not apply to all categories of regulatory violations. Both the willful misrepresentation and the potential for injury (or actual injury) must be present for the situation to rise to the level which could involve criminal prosecution. A provider who is out of compliance for other than an intentional misrepresentation and whose violation does not place children's health and safety in jeopardy would not be referred to law enforcement for violations of Chapter 600.

An example of a situation which would not rise to the level of involving criminal activity is an unregistered provider caring for seven toddlers and preschoolers and one infant. This individual is in violation of State law and regulation (maximum capacity of a family day care home) in addition to failure to register and the situation could pose a potential to the safety of a child. However, unless the provider told a parent, a representative of the Office, or a law enforcement or peace officer that (s)he was operating legally, or made a similar willful misrepresentation of his/her operation, this situation would not be one for which a criminal referral should be made.

DOES JEREMY AND JULIA'S LAW ELIMINATE THE NEED FOR ENFORCEMENT ACTION BY THE OFFICE?

[x] Suzanne Zafonte Sennett Date: 01/12/99