

License-Exempt Child Care Conference Report (SB 1239)

One Step Forward, Two Steps Back...



January 2017

Issue in Brief: Senator Hanger introduced SB 1239, a bill that incorporated recommendations to promote the safety of children in license-exempt child care as required in a report called for by the General Assembly in 2016. The Senate passed this measure on February 6. During consideration in the House, several amendments were adopted. A House-Senate conference committee negotiated the differences. On February 25, the Senate passed the conference bill by a vote of 40-0 and the House passed the measure by a vote of 89-7.

The final bill makes important changes to promote children's safety in six categories of center-based license-exempt child care. For 5 of these categories of care, we know that children are mostly school-age, but we don't know how many there are or their location. For the 6th category of license-exempt care, child care in religious institutions, we know that there are nearly 1,000 of such programs throughout Virginia – many of which care for children under age 5, including infants, every week.

While the conferees sought equity in applying a handful of new safety requirements across the board to all license-exempt child care programs, by repealing the current code section of safety provisions that apply to child care in religious institutions, the safety of children in those settings is undermined.

What are the new requirements under SB 1239?

- License-exempt programs must file annually with the Commissioner of the Department of Social Services under the specific license-exempt category that applies (to know the number of these programs, what type of program they are, and where they are located).
- Serious injuries and deaths of children that occur within these programs must be reported to the Commissioner.
- A staff person certified in CPR is required.

- Programs must maintain daily attendance records.
- Programs must have an emergency preparedness plan in place.
- Programs must comply with safe sleep guidelines for babies as recommended by the American Academy of Pediatrics.
- They must comply with applicable background check requirements.
- The Board of Social Services will determine a process for inspections (based on compliance with the above requirements).

What are the repealed requirements for child care in religious institutions (Code Section 63.2-1716)?

- **Repealed:** Local health department and fire marshal inspections to ensure centers are in compliance with food service activities, health & sanitation, water supply, building codes, and fire codes
- **Repealed:** Child:Staff ratios for safety and supervision (& evacuation if necessary). For example, current law requires 1 staff member for every 4 children under age 2, etc.
- **Repealed:** Notice to parents about staff qualifications (e.g., training)
- **Repealed:** Requirement to report any suspected cases of child abuse and neglect
- **Repealed:** Handwashing requirements by staff and children before eating and after toileting and diapering
- **Repealed:** Appropriate supervision of all children in care, including daily intake and dismissal procedures
- **Repealed:** daily simple health screening and exclusion of sick children
- **Repealed:** Requirement that the premises accessible to children be free of injury hazards, and requiring sand or other cushioning material under playground equipment
- **Repealed:** Requiring compliance with laws related to childhood immunizations

Of the 6 categories of license-exempt care addressed in SB 1239, only one of those categories, child care in religious institutions, involves the care of children under age 5, including babies. That's what makes the current code Section 63.2-1716 so important. The new requirements for license-exempt care should supplement the current code, not replace it.

Requiring safe sleep practices for babies (as required under SB 1239) is important. But, if a child care program can care for as many infants as they want (compared to the current law 1:4 staff/child ratio), then safe sleep practices alone are insufficient.

Dylan Cummings: Death in a Religious License-Exempt Child Care Program

One of the first things Betsy Cummings of Culpeper learned as a 22 year-old Navy boatswain mate and new mother was to never lay her son, Dylan, on his stomach to sleep. When she toured Little Eagles Day Care, run out of Bethel Temple Church of Deliverance, she was comforted in meeting the caring staff. She felt safe that this House of God would be a warm and loving place for her son.

Betsy was not a child care law expert. She didn't know that the Bethel Temple Church program was license-exempt. She was just a parent looking for safe, loving child care.

After returning to work for only one week, she received a phone call informing her that there had been an incident at the child care center. When she arrived at the church, a paramedic told her that Dylan had died.

There was an investigation. A report was released by the Virginia Department of Social Services that found that Dylan was one of 10 babies in the infant room for children one year old and younger. According to the Fire Marshal, they were supposed to have no more than 9 children under the age of two and a half, but on the day of Dylan's death, there were 24 children under the age of two and a half in attendance that day.

The infants were in cribs in a room that the Fire Marshal had labeled as an electrical store room. The room had poor ventilation and Dylan had been placed on his stomach to sleep. This happened even though she asked the staff to place him on his back to sleep as recommended by the National Academy of Pediatrics Back to Sleep Campaign.

Dylan was just 7 weeks old. He was too young to rollover or to lift his head. On the day that Dylan died, there were only 2 caregivers for the infant room. One of those two caregivers left the building to go to a doctor's appointment while the other caregiver, who was left to watch 10 infants by herself, went to the other side of the building, to eat her lunch.



Dylan Cummings

The medical examiner reported that Dylan was a healthy baby. The case went to court, but a judge dismissed felony charges against the owner and staff, *"while the Court is certainly sympathetic... the remedy for this situation lies in the sound discretion of the General Assembly, not with the Judiciary."*

One Step Forward, Two Steps Back

The new safety requirements under SB 1239 are important protections for children. However, repealing child:staff ratios and other requirements from current law undermines the safety of children in child care programs in religious institutions.

Children should be safe in child care. Too often, parents only learn about the safety of child care settings after a serious injury or tragic incident. Our laws in Virginia should promote child safety. Restoring Section 63.2-1716 is an important safety protection for children.