

## RESOLUTION 02-01-04

### DIGEST

#### "Kiddie Pool": Prohibition on Use at Child Day Care Facilities

Adds Health and Safety Code section 1596.848 to prohibit the use of "kiddie pools" at child day care facilities.

### RESOLUTIONS COMMITTEE RECOMMENDATION

#### DISAPPROVE

#### History:

No similar resolutions found.

#### Reasons:

This resolution adds Health and Safety Code section 1596.848 to prohibit the use of "kiddie pools" at child day care facilities. This resolution should be disapproved because the use of such pools at day care facilities is already addressed by statute and there are no studies or other support to indicate that further changes in the law are necessary.

California law heavily regulates child day care facilities. (Health & Saf. Code, § 1596.70 et. seq.; Cal. Code Regs., tit. 22, § 101151 et. seq.) The current statute addressing this type of pool calls it a "wading pool" and requires that it be emptied when not in use. (Health & Saf. Code, § 101238.5.) Moreover, when pools are used in a day care setting, current law requires that children must be supervised by at least one adult who has a valid water-safety certificate. (Cal. Code Regs., tit. 22, § 101216.6.)

While drowning is the leading cause of injury-related deaths in children, no statistics establish the relationship between drowning and "wading pools." (American Academy of Pediatrics, Prevention of Drowning in Infants, Children, and Adolescents (August 2003), Pediatrics, Vol. 112, No.2; Press Release, U.S. Consumer Product Safety Commission, CPSC Urges Pool Owners to Take Precautions to Prevent Drownings (May 25, 1999).) Furthermore, there is no study or other support for the assertion that pool-related injuries occur more often at day care facilities. Accordingly, there is no support for the proposition that banning the use of "wading pools" in day care facilities is necessary.

RESOLUTION 02-01-04

### TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to add Health and Safety Code section 1596.848 to read as follows:

- 1     § 1596.848
- 2     a) A "Kiddie Pool" shall not be kept or used on the premises of a child day care facility.
- 3     b) A "Kiddie Pool" shall be defined as a pool that may contain up to 4,000 gallons; is no

- 4 deeper than 3 feet; is no larger than 15 feet in dimension; has no filtration or small  
5 combined pump and filter units; and is sold for use by children.  
6 c) Section 1596.890 shall not apply to this section.

(Proposed new language underlined; language to be deleted stricken.)

PROPONENT: San Diego Lawyers Club

#### STATEMENT OF REASONS

Existing Law: There is currently no section in the Health and Safety Code, Chapter 3.4 (California Child Day Care Act - section 1596.70 et seq.) and/or the California Code of Regulations, Title 22, which governs the use of "Kiddie Pools" in child day care facilities. While the Health and Safety Code and the California Code of Regulations do a fine job in regulating above-ground pools, in-ground pools, spas, hot-tubs, and even fish ponds, they fail to address this hazard. Health and Safety Code section 1596.750 defines "Child day care facility" as a facility that provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. Child day care facility includes day care centers, employer-sponsored child care centers, and family day care homes. Health and Safety Code section 1596.890 makes a willful or repeated violation of any provision of Chapter 3.4 a misdemeanor.

This Resolution: Would add a section to the Health and Safety Code to specifically prohibit the use of "Kiddie Pools" in child day care facilities.

The Problem: The American Academy of Pediatrics in August 2003, issued a Technical Report that states that drowning and near-drowning are major causes of childhood morbidity and mortality from injury. In California it is the leading cause of death of children ages 1-4. In San Diego County there are about a dozen drowning deaths each year. Further, for each drowning death, it is estimated that at least 1-4 children suffer a serious nonfatal submersion event, many of which leave children with permanent disabilities. It has been estimated that hospital costs for a near drowning victim are approximately \$120,000 per year for life. To prevent this harm to children constant supervision around any open body of water must be maintained. This means that the care taker must have constant visual contact with the children in or near the water, and should be within arms reach of those children. It only takes a child 20 seconds or less to lose consciousness. Current California law provides that a small family child day care facility can have a ratio of 1 adult to 8 children, a large family child day care facility can have a ratio of 2 adults to 14 children. With child day care facilities being in high demand in California, the facilities most often are full. With this large ratio of adult to child, it is nearly impossible to maintain adequate supervision of the "Kiddie Pool" and all children within that providers' care. This resolution would thus prohibit the use of "Kiddie Pools," lessening the risk of harm to children in these facilities. While Health and Safety Code section 1596.890 makes a willful or repeated violation of any provision of Chapter 3.4 a misdemeanor, this resolution will make this section inapplicable, as there are other civil penalties that can and should be used against a

provider for failure to abide by the Code.

## IMPACT STATEMENT

This resolution does not affect any other law, statute or rule.

**AUTHOR AND/OR PERMANENT CONTACT:** Yosina M. Lissebeck, Sparber Rudolph Annen, 701 B Street, Suite 1000, San Diego, CA 92101-8109, voice 619-239-3600, e-mail [ylyssebeck@sparberlaw.com](mailto:ylyssebeck@sparberlaw.com)

**RESPONSIBLE FLOOR DELEGATE:** Yosina M. Lissebeck, Esq.

## COUNTERARGUMENTS

### **SAN DIEGO COUNTY BAR ASSOCIATION**

Without any evidence of an increased risk of drowning in day care facilities, this resolution would ban every child day care facility in the state from the having a pool, within the dimensions quoted above, on the premises. If such a pool already exists in a private home where the mother earns income as a day-care provider, the provider would have to rip out the pool, since it would be unlawful to have such a pool on the premises, even if not used during child care hours. No matter what the adult to child ratio is, the resolution assumes it cannot be safe to have what it terms a "kiddie pool" which is, basically, any pool 3 feet by 15 feet or smaller. This resolution, if it became law, would at the very least discourage many child care providers from offering their services, thus adding to the burden of working mothers.

### **SANTA CLARA COUNTY BAR ASSOCIATION**

Proponent cites the 2003 Technical Report of the American Academy of Pediatrics that does in fact state that "from 1990 to 2000, drowning was the second leading cause of unintentional injury and death among US children between 1 and 19 years of age." However proponent has drawn illogical and unreasonable conclusions from this study.

First, the study found that among toddlers, who are most likely to be using day care facilities, it was not swimming pools in day care centers that were implicated in most deaths; it was toddlers getting out of the house and drowning in their parents' own unfenced pool.

Second, older children also use day care, especially after school programs. But for these kids, drowning in more remote swimming areas is the leading cause of drowning deaths, not swimming at supervised centers.

In fact, the report proponent cites recommends several steps to reduce the number and severity of drowning accidents. These include: fencing around pools; pool alarms and covers (both recognizing the toddler wandering off alone issue); swimming instruction (difficult to do without a body of water); supervision (usually present at a day care center); training in CPR; and use of flotation devices. Conspicuously absent is any suggestion that supervised facilities be prevented from having kiddie pools.

Reasonable supervision requirements for all sorts of swimming pools are appropriate. Parents taking responsibility for checking up on the safety record, supervision level, and condition of equipment is also appropriate. But denying kids a place to splash around on a hot summer day is just wrong.

For these reasons, Santa Clara County Bar Association opposes Resolution 2-01-04.