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Bill protects private child welfare agencies

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The private agency responsible for protecting twins who were found along I-95 — one dead and decomposing and the other doused in caustic pest control chemicals in their adoptive father's truck — is seeking to limit its liability.

Bills filed less than two weeks after 10-year-old Nubia Barahona was found dead wrapped in a plastic bag would limit the liability of private child welfare agency Our Kids of Miami-Dade/Monroe and similar nonprofits for failure to protect the children whose welfare they are tasked with safeguarding.

The legislation would cut an agency's minimum general liability requirement from \$1 million to \$500,000. A \$2 million cap would be placed on economic damages, and a combined \$1 million cap would apply to noneconomic damages against lead agencies and subcontractors. A \$500,000 per incident cap would be placed on noneconomic damages for each liability claim.

The bills would also grant full immunity to the state Department of Children and Families for any negligence by its contractors.

The privatization of large parts of the child welfare system in 2005 largely left the 10-year-old twins under the supervision of Our Kids, which outsourced case management and the Barahonas' foster parent licensing to smaller firms, according to a DCF spokeswoman.

Miami lobbyist Ron Book said he talked with several legislators on behalf of clients Our Kids and Children's Home Society of Florida last year about limiting liability for privatized child welfare agencies and extending the state's sovereign immunity to them.

The twins were taken away from their abusive birth parents in 2004 and placed in the Barahonas' suburban home.

For half of their lives, Nubia and her twin, Victor, were watched over by an array of public and private child protection agencies in the west Miami-Dade home of adoptive parents Jorge and Carmen Barahona.

The case grabbed national headlines after the discovery of the twins on Valentine's Day in their father's pest control truck on I-95 in Palm Beach County.

Adoptive father Jorge Barahona is being held without bail on an aggravated child abuse charge in the Palm Beach County Jail. No charges have been filed against the adoptive mother.

Victor is living in a foster home after a two-week hospital stay.

A state investigation launched after Nubia's death last month has produced extensive reports of abuse while at the Barahona home.

Our Kids said it and several other providers statewide produced data that helped Florida Justice Reform Institute executive director William Large draft the bills.

The bills are sponsored by state Rep. Scott Plakon, R-Longwood, and state Sen. Jack Latvala, R-St. Petersburg. Plakon filed House Bill 1019 on Feb. 25, and Latvala filed Senate Bill 1500 on Wednesday. They did not return calls for comment by deadline.

Our Kids CEO Frances Allegra issued statements saying that limiting liability would help ensure private providers stay in operation.

"Liability costs for the lead and provider agencies go beyond the premiums they pay. There are also legal costs incurred separately by the agency and staff time to research claims — funds that would have gone to pay for services," a statement said.

The state's three-tiered child welfare system puts the state agency in a supervisory role, with lead community-based providers in the middle and subcontractors for various services at the lowest end.

"When the Department of Children and Families did the same case management they were protected by sovereign immunity. Now that the job is being done by a private worker they are not protected," Our Kids said. "This puts the taxpayers' money, which funds community-based care, at risk. The proposed language is not sovereign immunity, but limited liability."

Supporters note the state law governing the privatization of foster care states the cost of maintaining insurance should not impede services.

Critics point to the same law, noting legislators mandated high insurance requirements beyond the state's \$200,000 sovereign immunity damage cap because of the added security it would bring.

Child advocacy group **Florida's Children First** opposes the bill.

"When privatization was created, it was specifically stated children would be better served when agencies had insurance far in excess of the state's sovereign immunity limits," said Robin Rosenberg, deputy director of the child advocacy group.

It's not just about having insurance policies that could pay for the recovery of children like the surviving Barahona twin, she said. Having higher insurance means increased risk management that helps keep children out of danger, she added.

Fort Lauderdale plaintiff attorney Gary M. Farmer Jr. was agitated by the proposed liability cap.

"This system is a mess, and the last thing we need to do is immunize people who are responsible for taking children who've been removed from a home because they're already in a bad situation," Farmer said. The Barahonas "should have never had these kids."

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