

HB 3537

2015

1 A bill to be entitled
2 An act for the relief of C.M.H.; providing an
3 appropriation to compensate C.M.H. for injuries and
4 damages sustained as a result of the negligence of the
5 Department of Children and Families, formerly known as
6 the Department of Children and Family Services;
7 providing a limitation on the payment of fees and
8 costs; providing an effective date.

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10 WHEREAS, J.W. was victimized from the time he was 18 months
11 of age by his mother's boyfriend, which caused him to become
12 sexually aggressive, and

13 WHEREAS, on September 5, 2002, J.W., then in the custody of
14 the Department of Children and Families ("DCF"), formerly known
15 as the Department of Children and Family Services, was
16 temporarily placed into the home of C.M.H., whose parents became
17 nonrelative caregivers and volunteered to have J.W. live in
18 their home, and

19 WHEREAS, the DCF caseworker assigned to J.W.'s case failed
20 to disclose to C.M.H.'s family a recommendation that J.W. be
21 expeditiously placed in a residential treatment facility; that
22 he had an extensive history as a victim and perpetrator of
23 sexual abuse; and that he was an alleged juvenile sexual
24 offender, and

25 WHEREAS, prior to the placement of J.W. with the family,
26 DCF obtained a comprehensive behavioral health assessment that

27 | stated that J.W. was sexually aggressive and recommended
28 | specific precautions and training for potential foster parents,
29 | and which C.M.H.'s parents did not receive, and

30 | WHEREAS, the testimony of the DCF caseworker confirms that
31 | DCF was aware that 10-year-old J.W. and C.M.H., who was then 8
32 | years old, were sharing the same bedroom, and

33 | WHEREAS, on October 31, 2002, J.W. sexually assaulted a 4-
34 | year-old child who was visiting C.M.H.'s home, and

35 | WHEREAS, although DCF knew that J.W. was a sexual offender,
36 | the agency did not remove him from the home, and

37 | WHEREAS, DCF failed to implement a written safety plan as
38 | required by DCF Operating Procedure 175-88, and

39 | WHEREAS, after November 2002, J.W.'s behavioral problems
40 | escalated, and he deliberately squeezed C.M.H.'s pet mouse to
41 | death in front of C.M.H. and made physical threats toward
42 | C.M.H., and

43 | WHEREAS, C.M.H.'s parents decided to begin the process of
44 | adopting J.W., whom they considered a part of their family, and

45 | WHEREAS, the family subsequently became aware that J.W.
46 | needed significant mental health treatment, including placement
47 | in a residential treatment facility, and

48 | WHEREAS, the family was informed by DCF that they would not
49 | be granted visitation privileges if J.W. was removed from their
50 | home and placed in a residential treatment facility, and

51 | WHEREAS, in January 2004, the family began taking classes
52 | to train to be therapeutic foster parents to better meet J.W.'s

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53 needs, and

54 WHEREAS, in March 2004, after C.M.H.'s mother was diagnosed
55 with Stage 4, terminal, metastatic colon cancer, which had
56 spread to her liver, C.M.H.'s father contacted DCF to postpone
57 the adoption, and

58 WHEREAS, in April 2004, DCF closed out J.W.'s dependency
59 file, leaving J.W. in the custody of the family without any
60 subsidies or assistance, and

61 WHEREAS, in April 2005, C.M.H.'s father wrote DCF and the
62 juvenile judge assigned to the case to request help in placing
63 J.W. in a residential treatment facility, however, DCF provided
64 no assistance, and

65 WHEREAS, on July 28, 2005, after a physical altercation
66 between J.W. and C.M.H., C.M.H. disclosed to his parents that
67 J.W. had sexually assaulted him, and J.W. was immediately
68 removed from the home, and

69 WHEREAS, C.M.H. sustained severe and permanent psychiatric
70 injury, including posttraumatic stress disorder, as a result of
71 the sexual and emotional abuse perpetrated by J.W., and without
72 immediate interventions will face a lifetime of dysfunction,
73 trauma, and tragedy, and

74 WHEREAS, the sexual assault of C.M.H. by J.W. was
75 predictable and preventable, and

76 WHEREAS, on April 14, 2006, a lawsuit, Case No. 2006 CA
77 003727, was filed in the 15th Judicial Circuit in and for Palm
78 Beach County on behalf of C.M.H., by and through his parents,

79 alleging negligence on the part of DCF and its providers which
 80 allowed the perpetration of sexual abuse against and the
 81 victimization of C.M.H. by J.W., and

82 WHEREAS, DCF aggressively defended and denied the
 83 allegations in the claim and a jury trial was set in Palm Beach
 84 County, and

85 WHEREAS, on January 2, 2014, after a jury trial and verdict
 86 for \$5 million, the court entered a judgment against DCF for
 87 \$5,176,543.08, including costs, and

88 WHEREAS, the Division of Risk Management of the Department
 89 of Financial Services has paid \$100,000, as allowed under s.
 90 768.28, Florida Statutes, for costs, less than half of the total
 91 amount of litigation costs expended by plaintiff's counsel to
 92 litigate this case and to complete the trial, and

93 WHEREAS, C.M.H., now 21 years of age, is at a vulnerable
 94 stage in his life and urgently needs to recover the balance of
 95 the judgment awarded him so that his psychiatric injuries may be
 96 addressed and he may lead a normal life, and

97 WHEREAS, the balance of the judgment is to be paid into an
 98 irrevocable trust through the passage of this claims bill in the
 99 amount of \$5,076,543.08, NOW, THEREFORE,

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 101 Be It Enacted by the Legislature of the State of Florida:

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 103 Section 1. The facts stated in the preamble to this act
 104 are found and declared to be true.

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105 Section 2. There is appropriated from the General Revenue
106 Fund to the Department of Children and Families the sum of
107 \$5,076,543.08 for the relief of C.M.H. for the personal injuries
108 and damages he sustained. After payment of attorney fees and
109 costs, lobbying fees, and other similar expenses relating to
110 this claim, the remaining funds shall be placed into an
111 irrevocable trust created for C.M.H. for his exclusive use and
112 benefit.

113 Section 3. The Chief Financial Officer is directed to draw
114 a warrant in favor of C.M.H. in the sum of \$5,076,543.08 upon
115 funds of the Department of Children and Families in the State
116 Treasury, and the Chief Financial Officer is directed to pay the
117 same out of such funds in the State Treasury not otherwise
118 appropriated.

119 Section 4. The amount paid by the Department of Children
120 and Families pursuant to s. 768.28, Florida Statutes, and the
121 amount awarded under this act are intended to provide the sole
122 compensation for all present and future claims arising out of
123 the factual situation described in the preamble to this act
124 which resulted in the personal injuries and damages to C.M.H.
125 The total amount of attorney fees and lobbying fees relating to
126 this claim may not exceed 25 percent of the amount awarded under
127 this act.

128 Section 5. This act shall take effect upon becoming a law.