

By Senator Flores

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

10
11 WHEREAS, on May 30, 2000, 4 days after their birth, a baby
12 boy, hereinafter referred to as "Survivor" and his sister,
13 hereinafter referred to as "Victim," first came to the attention
14 of the Department of Children and Families, formerly known as
15 the Department of Children and Family Services, due to the fact
16 that the children were to be sent to separate foster homes, and

17 WHEREAS, Survivor was reunited with his biological mother
18 and father on July 26, 2000, and Victim was later reunited with
19 her biological family on January 8, 2001, and

20 WHEREAS, on August 4, 2003, the court terminated the
21 parental rights of Survivor's and Victim's biological mother,
22 and

23 WHEREAS, on March 26, 2004, Survivor's and Victim's
24 biological father was arrested, which resulted in both Survivor
25 and Victim being placed in the custody of the state and moved
26 into the foster home of Jorge and Carmen Barahona, and

27 WHEREAS, within 4 days of the placement of Survivor and
28 Victim in foster care, contact was made with paternal relatives
29 in Texas, Mr. and Mrs. Reyes, to explore their potential role as

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30 caregivers, and

31 WHEREAS, on March 30, 2004, Mr. and Mrs. Reyes informed the
32 Department of Children and Families that they were interested in
33 caring for Survivor and Victim, and

34 WHEREAS, pursuant to s. 39.521, Florida Statutes, placement
35 with adult relatives takes priority over out-of-home licensed
36 foster care placement, and Survivor and Victim should have been
37 placed in the Reyes's home as soon as due diligence rendered
38 this possible, and

39 WHEREAS, pursuant to s. 39.001, Florida Statutes,
40 Department of Children and Families case workers are required to
41 achieve permanency within 1 year, either through reunification
42 with a child's natural parents or adoption, and

43 WHEREAS, due to significant delays in the placement
44 process, the Reyes' were not permitted to adopt Survivor and
45 Victim, who were ultimately adopted by the Barahonas on May 29,
46 2009, and

47 WHEREAS, prior to the adoption of Survivor and Victim by
48 the Barahonas, significant events occurred which the Department
49 of Children and Families knew or should have known were
50 indicative of the perpetration of abuse of Survivor and Victim,
51 and

52 WHEREAS, in at least one instance, allegations of medical
53 neglect were reported and, pursuant to Department of Children
54 and Families Operating Procedure 175-28, the allegations should
55 have been verified and Survivor and Victim should have been
56 immediately removed from the Barahona home, and

57 WHEREAS, in January 2005, it was reported that Jorge
58 Barahona had "tickled the private parts" of Victim, which the

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59 child protective investigator dismissed as being of "little
60 concern," and

61 WHEREAS, on March 20, 2007, Survivor's and Victim's school
62 principal called in an abuse report to the Department of
63 Children and Families which alleged that, for 5 months, Victim
64 had been going to school at least two to three times per week
65 with serious body odor, smelling rotten, and appearing unkempt;
66 that Victim's uniforms were not clean and her shoes were dirty;
67 that on one occasion Victim had spilled applesauce in her hair
68 at school and returned the following day with the applesauce
69 still in her hair; that Victim was always hungry and eating a
70 lot at school, hoarding food in her backpack from breakfast and
71 lunch, and there was a concern that she was not eating at home;
72 that Victim was afraid to talk; that Survivor also went to
73 school appearing unkempt; and that both Survivor and Victim were
74 having trouble staying awake during classes, and

75 WHEREAS, on March 29, 2007, the Department of Children and
76 Families learned that Survivor and Victim had been absent from
77 school approximately 20 days, taken out of school early about a
78 dozen times, and were expected to be retained in the first
79 grade, and

80 WHEREAS, on May 29, 2009, Victim and Survivor were adopted
81 by the Barahonas, despite numerous incidents that should have
82 led to an active investigation and discovery of abuse, and

83 WHEREAS, in February 2011, the Department of Children and
84 Families Abuse Hotline received another report concerning
85 Survivor and Victim, this time alleging that Survivor and Victim
86 were being severely abused and imprisoned from the world, and

87 WHEREAS, the Department of Children and Families had the

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88 duty and the responsibility to remove Survivor and Victim from a
89 placement in which there was a substantial risk of harm, and
90 over the course of 6 years there were multiple instances of
91 abuse which the department either knew or should have known were
92 occurring, and

93 WHEREAS, on February 14, 2011, the six years of abuse by
94 the Barahonas resulted in the death of Victim, who was found
95 dead in a truck parked off I-95 in Palm Beach County, and the
96 near-death of Survivor, who was found in critical condition, and

97 WHEREAS, after the death of Victim and the discovery of the
98 severe abuse to Survivor and Victim, the Secretary of the
99 Department of Children and Families, David E. Wilkins, conducted
100 an investigation that culminated on March 14, 2011, with the
101 issuance of a report of findings and recommendations, and

102 WHEREAS, in the executive summary of the report,
103 investigators reported that there were significant gaps and
104 failures in common sense, critical thinking, ownership, follow-
105 through, and timely and accurate information sharing, all of
106 which defined the care of Survivor and Victim from the inception
107 of their relationship with the state child welfare system, and

108 WHEREAS, the investigators determined that the systematic
109 failure included both investigative and case management
110 processes, as well as the pre- and post-adoption processes, and

111 WHEREAS, the investigations that took place following
112 Victim's death, and the critical condition of Survivor, revealed
113 numerous incidents of abuse, including, but not limited to,
114 punching, kicking, choking, beatings, denial of basic and
115 necessary medical care, forcing the children to eat cockroaches
116 and food that contained feces, sexual abuse, sticking cotton

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117 swabs with human feces in the children's ears, suffocating one
118 child with a plastic bag while the other child watched, smearing
119 feces over the children's faces and placing feces on the
120 children's hands for extended periods of time, and binding the
121 children with duct tape and placing them naked in a bathtub
122 together for days on end, and

123 WHEREAS, after the death of Victim and the discovery of
124 Survivor, criminal charges were filed against the Barahonas, and

125 WHEREAS, tort claims were filed on behalf of Victim and
126 Survivor in the United States District Court for the Southern
127 District of Florida, Case No. 1:11-civ-24611-PAS, and a
128 complaint was also filed in the Circuit Court for the Eleventh
129 Judicial Circuit of Miami-Dade County, Case No. 13-2715 CA 25,
130 and

131 WHEREAS, the personal representative of the Estate of
132 Victim and the newly adoptive parents of Survivor have agreed to
133 amicably settle this matter and have entered into a settlement
134 agreement in which the Department of Children and Families has
135 agreed to pay \$5 million to Survivor and the Estate of Victim,
136 and

137 WHEREAS, as a result of the allegations of both negligence
138 and the violation of civil rights, and pursuant to s. 768.28,
139 Florida Statutes, the Department of Children and Families has
140 paid \$1.25 million to Survivor and the Estate of Victim, and

141 WHEREAS, the balance of the settlement agreement is to be
142 paid through the passage of this claim bill in the amount of
143 \$3.75 million, and

144 WHEREAS, the Department of Children and Families fully
145 supports the passage of this claim bill, NOW, THEREFORE,

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

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

Section 2. The sum of \$3.75 million is appropriated from the General Revenue Fund to the Department of Children and Families for the relief of Survivor for the personal injuries he sustained and to the Estate of Victim for damages relating to the death of Victim.

Section 3. The Chief Financial Officer is directed to draw a warrant in favor of the adoptive parents of Survivor, as legal guardians of Survivor, and to Richard Milstein, as personal representative of the Estate of Victim, in the sum of \$3.75 million upon funds of the Department of Children and Families in the State Treasury, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury.

Section 4. The amount paid by the Department of Children and Families pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in the preamble to this act which resulted in the personal injuries of Survivor and the death of Victim. The total amount paid for attorney fees and lobbying fees relating to this claim may not exceed 25 percent of the amount awarded under this act.

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