

By Senator Garcia

38-00128-16

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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.
9

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 as
15 the Department of Children and Family Services, was temporarily
16 placed into the home of C.M.H., whose parents became nonrelative
17 caregivers and volunteered to have J.W. live in their home, and

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

24 WHEREAS, prior to the placement of J.W. with the family,
25 DCF obtained a comprehensive behavioral health assessment that
26 stated that J.W. was sexually aggressive and recommended
27 specific precautions and training for potential foster parents,
28 and which C.M.H.'s parents did not receive, and

29 WHEREAS, the testimony of the DCF caseworker confirms that

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30 DCF was aware that 10-year-old J.W. and C.M.H., who was then 8
31 years old, were sharing the same bedroom, and

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

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

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

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

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

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

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

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

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

57 WHEREAS, in April 2004, DCF closed out J.W.'s dependency
58 file, leaving J.W. in the custody of the family without any

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59 subsidies or assistance, and

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

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

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

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

75 WHEREAS, on April 14, 2006, a lawsuit, Case No. 2006 CA
76 003727, was filed in the 15th Judicial Circuit in and for Palm
77 Beach County on behalf of C.M.H., by and through his parents,
78 alleging negligence on the part of DCF and its providers, which
79 allowed the perpetration of sexual abuse against and the
80 victimization of C.M.H. by J.W., and

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

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

87 WHEREAS, the Division of Risk Management of the Department

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88 of Financial Services has paid the family of C.M.H. \$100,000, as
89 allowed under s. 768.28, Florida Statutes, for legal expenses,
90 which is less than half of the total amount of litigation costs
91 expended by plaintiff's counsel to litigate this case and to
92 complete the trial, and

93 WHEREAS, C.M.H., now 22 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 claim bill in the
99 amount of \$5,076,543.08, NOW, THEREFORE,

100

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

102

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

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

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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.