

By the Committee on Judiciary; and Senator Flores

590-03309-16

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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 compensation,
9 fees, and 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 twin 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 their biological mother
18 and father on July 26, 2000, and Victim was reunited with them
19 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
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

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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 allowed, and

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

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

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

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

56 WHEREAS, in January 2005, it was reported that Jorge
57 Barahona had "tickled the private parts" of Victim, which the
58 child protective investigator dismissed as being of "little
59 concern," and

60 WHEREAS, on March 20, 2007, Survivor's and Victim's school
61 principal called in an abuse report to the Department of

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

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

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

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

86 WHEREAS, it was the duty of the Department of Children and
87 Families to remove Survivor and Victim from a placement in which
88 there was a substantial risk of harm and, over the course of 6
89 years, there were multiple instances of abuse which the
90 department either knew or should have known were occurring in

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91 connection with their placement with the Barahonas, and

92 WHEREAS, on February 14, 2011, Victim was found dead in a
93 truck parked off I-95 in Palm Beach County, and Survivor was
94 found near death, in critical condition, and

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

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

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

109 WHEREAS, the investigative report cited numerous incidents
110 of abuse of the children, including, but not limited to,
111 punching, kicking, choking, beatings, the denial of basic and
112 necessary medical care, forcing the children to eat cockroaches
113 and food that contained feces, sexual abuse, sticking cotton
114 swabs with human feces in the children's ears, suffocating one
115 child with a plastic bag while the other child watched, smearing
116 feces over the children's faces and placing feces on the
117 children's hands for extended periods of time, and binding the
118 children with duct tape and placing them naked in a bathtub
119 together for days on end, and

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

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

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

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

138 WHEREAS, the balance of the settlement agreement is to be
139 paid through the passage of this claim bill in the amount of
140 \$3.75 million, and such funds shall be allocated between
141 Survivor and the Estate of Victim so that Survivor will receive
142 \$1.125 million and the Estate of Victim will receive \$2.625
143 million, and

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

146

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

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

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

156 Section 3. The Chief Financial Officer is directed to draw
157 a warrant in favor of the adoptive parents of Survivor, as legal
158 guardians of Survivor, in the amount of \$1.125 million, and to
159 Richard Milstein, as personal representative of the Estate of
160 Victim, in the amount of \$2.625 million upon funds of the
161 Department of Children and Families in the State Treasury, and
162 the Chief Financial Officer is directed to pay the same out of
163 such funds in the State Treasury.

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

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