

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 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 remained in the care of the Barahonas, and

45 WHEREAS, significant events occurred which the Department
46 of Children and Families knew or should have known were
47 indicative of the perpetration of abuse of Survivor and Victim,
48 and

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

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

58 WHEREAS, on March 20, 2007, Survivor's and Victim's school
59 principal called in an abuse report to the Department of
60 Children and Families which alleged that, for 5 months, Victim
61 had been going to school at least two to three times per week

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

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

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

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

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

90 WHEREAS, on February 14, 2011, Victim was found dead in a

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91 truck parked off I-95 in Palm Beach County, and Survivor was
92 found near death, in critical condition, and

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

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

104 WHEREAS, investigators determined that the systematic
105 failure included both investigative and case management
106 processes, as well as the preadoption and postadoption
107 processes, and

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

119 WHEREAS, after the death of Victim and the discovery of

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

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

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

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

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

145
146 Be It Enacted by the Legislature of the State of Florida:

147
148 Section 1. The facts stated in the preamble to this act are

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149 found and declared to be true.

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

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

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

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