

By the Committee on Judiciary; and 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 that the amount already paid by the  
9 department and the appropriation satisfy all present  
10 and future claims related to the injuries of Survivor  
11 and the death of Victim; providing a limitation on the  
12 payment of attorney fees; providing an effective date.  
13

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

20 WHEREAS, Survivor was reunited with their biological mother  
21 and father on July 26, 2000, and Victim was reunited with them  
22 on January 8, 2001, and

23 WHEREAS, on August 4, 2003, the court terminated the  
24 parental rights of Survivor's and Victim's biological mother,  
25 and

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

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30 WHEREAS, within 4 days of the placement of Survivor and  
31 Victim in foster care, contact was made with paternal relatives  
32 in Texas, Mr. and Mrs. Reyes, to explore their potential role as  
33 caregivers, and

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

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

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

45 WHEREAS, due to significant delays in the placement  
46 process, the Reyes were not permitted to adopt Survivor and  
47 Victim, who remained in the care of the Barahonas, and

48 WHEREAS, 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, it was the duty of the Department of Children and

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

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

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

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

107 WHEREAS, investigators determined that the systematic  
108 failure included both investigative and case management  
109 processes, as well as the preadoption and postadoption  
110 processes, and

111 WHEREAS, the investigative report cited numerous incidents  
112 of abuse of the children, including, but not limited to,  
113 punching, kicking, choking, beatings, the denial of basic and  
114 necessary medical care, forcing the children to eat cockroaches  
115 and food that contained feces, sexual abuse, sticking cotton  
116 swabs with human feces in the children's ears, suffocating one

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

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

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

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

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

140 WHEREAS, the balance of the settlement agreement is to be  
141 paid through the passage of this claim bill in the amount of  
142 \$3.75 million, and such funds shall be allocated between  
143 Survivor and the Estate of Victim so that Survivor will receive  
144 \$1.125 million and the Estate of Victim will receive \$2.625  
145 million, and

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

148  
149 Be It Enacted by the Legislature of the State of Florida:

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

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

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

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

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