

By the Committees on Appropriations; and Judiciary; and Senator Flores

576-03484-17

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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 appropriations to compensate
4 Survivor and the Estate of Victim for injuries and
5 damages sustained as a 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 caseworkers 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. For the relief of Survivor for personal injuries
154 he sustained and to the Estate of Victim for damages related to
155 the death of Victim:

156 (1) The sum of \$1.875 million is appropriated from the
157 Federal Grants Trust Fund to the Department of Children and
158 Families for the 2017-2018 fiscal year; and

159 (2) The sum of \$1.875 million is appropriated from the
160 Federal Grants Trust Fund to the Department of Children and
161 Families for the 2018-2019 fiscal year.

162 Section 3. The Chief Financial Officer is directed to draw
163 warrants upon the funds appropriated in section 2 of this act to
164 pay such funds, as follows:

165 (1) No later than August 1, 2017, in favor of the adoptive
166 parents of Survivor, as legal guardians of Survivor, in the
167 amount of \$562,500, and to Richard Milstein, as personal
168 representative of the Estate of Victim, in the amount of
169 \$1,312,500; and

170 (2) No later than August 1, 2018, in favor of the adoptive
171 parents of Survivor, as legal guardians of Survivor, in the
172 amount of \$562,500, and to Richard Milstein, as personal
173 representative of the Estate of Victim, in the amount of
174 \$1,312,500.

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

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