

CHAPTER 2017-20

Committee Substitute for Committee Substitute for Senate Bill No. 18

An act for the relief of “Survivor” and the Estate of “Victim”; providing appropriations to compensate Survivor and the Estate of Victim for injuries and damages sustained as a result of the negligence of the Department of Children and Families, formerly known as the Department of Children and Family Services; providing that the amount already paid by the department and the appropriation satisfy all present and future claims related to the injuries of Survivor and the death of Victim; providing a limitation on the payment of attorney fees; providing an effective date.

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

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

WHEREAS, on August 4, 2003, the court terminated the parental rights of Survivor’s and Victim’s biological mother, and

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

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

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

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

WHEREAS, pursuant to s. 39.001, Florida Statutes, Department of Children and Families caseworkers are required to achieve permanency

within 1 year, either through reunification with a child’s natural parents or adoption, and

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

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

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

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

WHEREAS, on March 20, 2007, Survivor’s and Victim’s school principal called in an abuse report to the Department of Children and Families which alleged that, for 5 months, Victim had been going to school at least two to three times per week with serious body odor, smelling rotten, and appearing unkempt; that Victim’s uniforms were not clean and her shoes were dirty; that on one occasion Victim had spilled applesauce in her hair at school and returned the following day with the applesauce still in her hair; that Victim was always hungry and eating a lot at school, hoarding food in her backpack from breakfast and lunch, and there was a concern that she was not eating at home; that Victim was afraid to talk; that Survivor also went to school appearing unkempt; and that both Survivor and Victim were having trouble staying awake during classes, and

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

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

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

WHEREAS, it was the duty of the Department of Children and Families to remove Survivor and Victim from a placement in which there was a substantial risk of harm, and, over the course of 6 years, there were

multiple instances of abuse which the department either knew or should have known were occurring in connection with their placement with the Barahonas, and

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

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

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

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

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

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

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

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

WHEREAS, as a result of the allegations of both negligence and civil rights violations, and pursuant to s. 768.28, Florida Statutes, the

Department of Children and Families has paid \$1.25 million to Survivor and the Estate of Victim, and

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

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

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

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

Section 2. For the relief of Survivor for personal injuries he sustained and to the Estate of Victim for damages related to the death of Victim:

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

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

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

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

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

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

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

Approved by the Governor May 23, 2017.

Filed in Office Secretary of State May 23, 2017.