

## Committee Substitute for Senate Bill No. 58

An act for the relief of Jorge and Debbie Garcia-Bengochea and their adoptive children, Brian, Matthew, and James, by the Department of Children and Family Services; providing an appropriation to compensate them for injuries and damages sustained as a result of negligence by employees of the department or its predecessor agency; providing a limitation on the payment of attorney's fees and lobbying fees; providing legislative intent with respect to ratification of terms of the parties' settlement agreement and waiver of lien interests held by the state; providing an effective date.

WHEREAS, when Jorge and Debbie Garcia-Bengochea legally adopted Brian, Matthew, and James, on July 24, 1998, the boys had previously been under the care and supervision of the Department of Health and Rehabilitative Services, the predecessor agency for the Department of Children and Family Services, and

WHEREAS, in November 1994, when the boys were ages 2 years and 9 months, 1 year and 9 months, and approximately 1 month, the department placed them in an emergency shelter because of evidence of physical and sexual abuse and neglect while under the care of the boys' biological mother and the father of Matthew and James, and

WHEREAS, Brian, Matthew, and James officially entered the department's foster care system in January 1995, following a departmental investigation indicating that they had been physically, mentally, and sexually abused and that their biological parents were mentally ill, had poor prognoses for improvement, and were abusing alcohol and illegal drugs, and

WHEREAS, from January 1995 to March 1997, the boys lived in two foster homes that were loving and provided them with nurturing care, and although both foster parents expressed interest in adopting the boys, the department did not bring the foster parents' requests to the attention of the dependency court, and

WHEREAS, in mid-March of 1997, the department reunified Brian, Matthew, and James with their biological mother against the advice and repeated warnings from social workers, counselors, therapists, and personnel of social service agencies who recommended against the reunification and advised the department that the boys' biological mother had married a man known for alcohol abuse and cocaine addiction, and

WHEREAS, after returning Brian, Matthew, and James to their biological mother, the department did not provide her with sufficient support and services despite warnings to the department by counselors, social service agencies, and therapists that Brian, Matthew, and James would be at risk of further harm absent such support and services, and

WHEREAS, on June 3, 1997, the boys' biological mother was arrested for child abuse and ordered to undergo treatment, and

WHEREAS, on August 4, 1997, the parental rights of the boys' biological mother were permanently terminated, and the parental rights of the boys' biological father had been terminated before that date, and

WHEREAS, over the next 2 years, the department placed Brian, Matthew, and James in various shelters and foster homes, and on various occasions Brian, Matthew, and James were abused and neglected by their caretakers, which included cruel discipline where they were locked overnight in a backyard chicken coop and underfed, and

WHEREAS, one of the boys' foster parents, Hector Rosa, was later convicted of sexual battery on each of the three boys and another foster child and is serving a life sentence in prison, and

WHEREAS, while the boys were living in the foster home of Hector Rosa, their therapist repeatedly expressed concern to the department regarding Hector Rosa's treatment of the boys, including a report to the department that while on an outing with the youngest child, he dropped to his knees and hysterically begged not to be returned to the Rosa foster home, but the department did not act on the report, and

WHEREAS, in March 1998, the department arranged for the introduction of Brian, Matthew, and James, then aged 6, 5, and 3, to Jorge and Debbie Garcia-Bengochea, a couple who had expressed interest in adopting one or, if they were siblings, perhaps two children, but who had specified that they could not adopt children who had significant emotional problems or who were acting out sexually, and

WHEREAS, before this introduction, departmental records included medical reports concerning Brian, Matthew, and James which indicated a history of sexual abuse and also reports by foster parents and day care centers indicating that Brian, Matthew, and James were committing sexual acts on one another and on other children, but the records and the information contained therein were not shared with the Garcia-Bengocheas, and

WHEREAS, subsequent to adopting Brian, Matthew, and James, the adoptive parents saw that the boys had severe behavioral problems and were acting out sexually with one another and other children and later came to understand the reasons for these problems, and

WHEREAS, the boys soon became aggressive with one another and other children, attacked their adoptive mother, were expelled from school, and had to be separated from other children, and

WHEREAS, a departmental memorandum of August 11, 2000, described the Garcia-Bengocheas as "a family in crisis" and admitted, while making various recommendations, that the department had failed to protect the boys by stating that the adoptive parents "are attempting to parent children who were severely damaged while under [the department's] care," and

WHEREAS, in January of 2001, the adoptive parents and the three boys traveled to a treatment center in Colorado and, upon arriving there, learned that the department had failed to forward their records, and when the

treatment center requested the records from the department, the treatment center was told that the department would send records only if the treatment center promised to conceal the records from, and not disclose the information contained therein to, the adoptive parents, and

WHEREAS, the adoptive parents learned from the staff at the treatment center in Colorado, and subsequently from records produced by the department during the civil litigation, that the department had not disclosed key material records concerning Brian, Matthew, and James and their biological parents during the preadoption period, and

WHEREAS, the additional records revealed a history of trauma, abuse, neglect, and resulting behaviors of their adoptive children which had not been previously disclosed to the Garcia-Bengocheas, and if full and complete disclosure of the history had been provided they would not have adopted the boys, and

WHEREAS, Brian, Matthew, and James, now 17, 16, and 14 years of age, have each been diagnosed as having severe reactive attachment disorder, posttraumatic stress disorder, and oppositional defiant disorder, and

WHEREAS, among Brian, Matthew, and James there have been numerous instances of psychiatric hospitalizations, expulsions from school, acts of aggression, sexual acting out on each other and on other children, and running away from home, and

WHEREAS, defiant behavior of the two eldest boys has led to their recent involvement with the juvenile justice system, and

WHEREAS, Brian, Matthew, and James will need a variety of psychiatric or therapeutic services, and the adoptive parents will also require professional services, and

WHEREAS, the adoptive parents have filed a lawsuit against the Department of Children and Family Services seeking compensation for injuries caused by negligence in the care and supervision of Brian, Matthew, and James by departmental employees and agents and alleging wrongful adoption, based on negligent misrepresentations and concealment by departmental employees and agents, and

WHEREAS, during the discovery phase of the litigation, even the department's own retained expert witness, Bruce Perry, M.D., admitted under oath during his deposition that the department was negligent and that he had recommended that the department settle the case, and

WHEREAS, the parties have reached a settlement in the amount of \$10 million, with other terms of value, and the plaintiffs have been paid \$500,000, or \$100,000 per claimant, pursuant to the limits of liability set forth in s. 768.28, Florida Statutes, leaving a balance of \$9.5 million to be paid pursuant to this agreed-upon 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. There is appropriated from the Federal Grants Trust Fund within the Department of Children and Family Services the sum of \$950,000 each year for fiscal years 2009-2010 through 2018-2019, inclusive, to the department for the relief of Jorge and Debbie Garcia-Bengochea and their adopted sons, Brian, Matthew, and James Garcia-Bengochea, for injuries and damages sustained as a result of negligent acts by employees and agents of the Department of Children and Family Services or its predecessor agency, the Department of Health and Rehabilitative Services.

Section 3. For fiscal years 2009-2010 through 2018-2019, inclusive, the Chief Financial Officer is directed to draw annually a warrant in favor of Jorge and Debbie Garcia-Bengochea and of the trusts in place for Brian, Matthew, and James in the sum of \$950,000 upon funds of the Department of Children and Family Services in the State Treasury. The Chief Financial Officer is directed to pay the same out of such funds in the State Treasury. These funds shall be distributed annually as follows:

(1) The sum of \$256,666.66 to the special needs trust for Brian Garcia-Bengochea;

(2) The sum of \$256,666.66 to the special needs trust for Matthew Garcia-Bengochea;

(3) The sum of \$256,666.66 to the special needs trust for James Garcia-Bengochea;

(4) The sum of \$90,000 to Debbie Garcia-Bengochea; and

(5) The sum of \$90,000 to Jorge Garcia-Bengochea.

Section 4. (1) This award, appropriated up to a grand total of \$9.5 million, is intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the injury to Jorge and Debbie Garcia-Bengochea and their adopted sons, Brian, Matthew, and James Garcia-Bengochea.

(2) The total amount paid for attorney's fees and lobbying fees are to be paid to the attorneys and lobbyists currently retained by the claimants. The total amount paid for attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of each annual payment awarded pursuant to this act. Further, no more than 25 percent of each annual payment may be used to pay attorney's fees, lobbying fees, costs, and other similar expenses relating to this claim.

Section 5. (1) It is the intent of the Legislature that the department's recognition of its negligence as the cause of the injuries suffered by the minor children, as provided by the parties' settlement agreement, is ratified by this act and all lien interests held by the state resulting from the treatment and care of Jorge and Debbie Garcia-Bengochea and their adopted sons, Brian, Matthew and James Garcia-Bengochea, for the occurrences described in this act are waived.

(2) Brian, Matthew, and James Garcia-Bengochea shall be eligible for services from the Department of Children and Family Services as though each child is eligible for foster care-related services.

Section 6. This act shall take effect upon becoming a law.

Approved by the Governor June 2, 2009.

Filed in Office Secretary of State June 9, 2009.