

By the Committee on Judiciary; and Senator Simpson

590-01892A-15

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1                   A bill to be entitled  
2       An act for the relief of C.M.H.; providing an  
3       appropriation to compensate C.M.H. for injuries and  
4       damages sustained as a result of the negligence of the  
5       Department of Children and Families, formerly known as  
6       the Department of Children and Family Services;  
7       providing a limitation on the payment of fees and  
8       costs; providing an effective date.  
9

10       WHEREAS, J.W. was victimized from the time he was 18 months  
11       of age by his mother's boyfriend, which caused him to become  
12       sexually aggressive, and

13       WHEREAS, on September 5, 2002, J.W., then in the custody of  
14       the Department of Children and Families ("DCF"), formerly known  
15       as the Department of Children and Family Services, was  
16       temporarily placed into the home of C.M.H., whose parents became  
17       nonrelative caregivers and volunteered to have J.W. live in  
18       their home, and

19       WHEREAS, the DCF caseworker assigned to J.W.'s case failed  
20       to disclose to C.M.H.'s family a recommendation that J.W. be  
21       expeditiously placed in a residential treatment facility; that  
22       he had an extensive history as a victim and perpetrator of  
23       sexual abuse; and that he was an alleged juvenile sexual  
24       offender, and

25       WHEREAS, prior to the placement of J.W. with the family,  
26       DCF obtained a comprehensive behavioral health assessment that  
27       stated that J.W. was sexually aggressive and recommended  
28       specific precautions and training for potential foster parents,  
29       and which C.M.H.'s parents did not receive, and

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30 WHEREAS, the testimony of the DCF caseworker confirms that  
31 DCF was aware that 10-year-old J.W. and C.M.H., who was then 8  
32 years old, were sharing the same bedroom, and

33 WHEREAS, on October 31, 2002, J.W. sexually assaulted a 4-  
34 year-old child who was visiting C.M.H.'s home, and

35 WHEREAS, although DCF knew that J.W. was a sexual offender,  
36 the agency did not remove him from the home, and

37 WHEREAS, DCF failed to implement a written safety plan as  
38 required by DCF Operating Procedure 175-88, and

39 WHEREAS, after November 2002, J.W.'s behavioral problems  
40 escalated, and he deliberately squeezed C.M.H.'s pet mouse to  
41 death in front of C.M.H. and made physical threats toward  
42 C.M.H., and

43 WHEREAS, C.M.H.'s parents decided to begin the process of  
44 adopting J.W., whom they considered a part of their family, and

45 WHEREAS, the family subsequently became aware that J.W.  
46 needed significant mental health treatment, including placement  
47 in a residential treatment facility, and

48 WHEREAS, the family was informed by DCF that they would not  
49 be granted visitation privileges if J.W. was removed from their  
50 home and placed in a residential treatment facility, and

51 WHEREAS, in January 2004, the family began taking classes  
52 to train to be therapeutic foster parents to better meet J.W.'s  
53 needs, and

54 WHEREAS, in March 2004, after C.M.H.'s mother was diagnosed  
55 with Stage 4, terminal, metastatic colon cancer, which had  
56 spread to her liver, C.M.H.'s father, contacted DCF to postpone  
57 the adoption, and

58 WHEREAS, in April 2004, DCF closed out J.W.'s dependency

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59 file, leaving J.W. in the custody of the family without any  
60 subsidies or assistance, and

61 WHEREAS, in April 2005, C.M.H.'s father wrote DCF and the  
62 juvenile judge assigned to the case to request help in placing  
63 J.W. in a residential treatment facility, however, DCF provided  
64 no assistance, and

65 WHEREAS, on July 28, 2005, after a physical altercation  
66 between J.W. and C.M.H., C.M.H. disclosed to his parents that  
67 J.W. had sexually assaulted him, and J.W. was immediately  
68 removed from the home, and

69 WHEREAS, C.M.H. sustained severe and permanent psychiatric  
70 injury, including posttraumatic stress disorder, as a result of  
71 the sexual and emotional abuse perpetrated by J.W., and without  
72 immediate interventions will face a lifetime of dysfunction,  
73 trauma, and tragedy, and

74 WHEREAS, the sexual assault of C.M.H. by J.W. was  
75 predictable and preventable, and

76 WHEREAS, on April 14, 2006, a lawsuit, Case No. 2006 CA  
77 003727, was filed in the 15th Judicial Circuit in and for Palm  
78 Beach County on behalf of C.M.H., by and through his parents,  
79 alleging negligence on the part of DCF and its providers which  
80 allowed the perpetration of sexual abuse against and the  
81 victimization of C.M.H. by J.W., and

82 WHEREAS, DCF aggressively defended and denied the  
83 allegations in the claim and a jury trial was set in Palm Beach  
84 County, and

85 WHEREAS, on January 2, 2014, after a jury trial and verdict  
86 for \$5 million, the court entered a judgment against DCF for  
87 \$5,176,543.08, including costs, and

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88 WHEREAS, the Division of Risk Management of the Department  
89 of Financial Services has paid \$100,000, as allowed under s.  
90 768.28, Florida Statutes, for costs, less than half of the total  
91 amount of litigation costs expended by plaintiff's counsel to  
92 litigate this case and to complete the trial, and

93 WHEREAS, C.M.H., now 21 years of age, is at a vulnerable  
94 stage in his life and urgently needs to recover the balance of  
95 the judgment awarded him so that his psychiatric injuries may be  
96 addressed and he may lead a normal life, and

97 WHEREAS, the balance of the judgment is to be paid into an  
98 irrevocable trust through the passage of this claim bill in the  
99 amount of \$5,076,543.08, NOW, THEREFORE,

100

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

102

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

105 Section 2. There is appropriated from the General Revenue  
106 Fund to the Department of Children and Families the sum of  
107 \$5,076,543.08 for the relief of C.M.H. for the personal injuries  
108 and damages he sustained. After payment of attorney fees and  
109 costs, lobbying fees, and other similar expenses relating to  
110 this claim, the remaining funds shall be placed into an  
111 irrevocable trust created for C.M.H. for his exclusive use and  
112 benefit.

113 Section 3. The Chief Financial Officer is directed to draw  
114 a warrant in favor of C.M.H. in the sum of \$5,076,543.08 upon  
115 funds of the Department of Children and Families in the State  
116 Treasury, and the Chief Financial Officer is directed to pay the

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117 same out of such funds in the State Treasury not otherwise  
118 appropriated.

119       Section 4. The amount paid by the Department of Children  
120 and Families pursuant to s. 768.28, Florida Statutes, and the  
121 amount awarded under this act are intended to provide the sole  
122 compensation for all present and future claims arising out of  
123 the factual situation described in the preamble to this act  
124 which resulted in the personal injuries and damages to C.M.H.  
125 The total amount of attorney fees and lobbying fees relating to  
126 this claim may not exceed 25 percent of the amount awarded under  
127 this act.

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