

By the Committee on Judiciary; and Senator Braynon

590-02429-17

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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           requiring certain funds to be placed into an  
8           irrevocable trust; providing a limitation on attorney  
9           fees; providing an effective date.

10  
11           WHEREAS, beginning at a very young age, J.W. was subjected  
12           to incidents of physical and sexual abuse, which caused him to  
13           become sexually aggressive, and

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

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

24           WHEREAS, the testimony of the DCF caseworker confirmed that  
25           DCF was aware that then-10-year-old J.W. and then-8-year-old  
26           C.M.H. were sharing a bedroom, and

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

29           WHEREAS, although DCF knew that J.W. was sexually

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30 aggressive, the agency did not remove him from the home, and

31 WHEREAS, after November 2002, J.W.'s behavioral problems  
32 escalated, and he deliberately squeezed C.M.H.'s pet mouse to  
33 death in front of C.M.H. and made physical threats toward  
34 C.M.H., and

35 WHEREAS, C.M.H.'s parents began to discuss adopting J.W.,  
36 whom they considered a part of their family, and

37 WHEREAS, in January 2004, the family began taking  
38 therapeutic parenting classes to better meet J.W.'s needs, and

39 WHEREAS, in March 2004, after C.M.H.'s mother was diagnosed  
40 with Stage 4, terminal, metastatic colon cancer, which had  
41 spread to her liver, C.M.H.'s father requested that DCF stop the  
42 process of having the family designated as "long-term  
43 nonrelative caregivers," and

44 WHEREAS, in April 2004, DCF closed out J.W.'s dependency  
45 file, leaving J.W. in the custody of the family, and

46 WHEREAS, in April 2005, C.M.H.'s father wrote DCF and the  
47 juvenile judge assigned to the case to request help in placing  
48 J.W. in a residential treatment facility, and

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

53 WHEREAS, C.M.H. sustained severe and permanent psychiatric  
54 injuries, including posttraumatic stress disorder, as a result  
55 of the sexual and emotional abuse perpetrated by J.W., and

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

58 WHEREAS, on April 14, 2006, a lawsuit, Case No. 2006 CA

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59 003727, was filed in the 15th Judicial Circuit in and for Palm  
60 Beach County on behalf of C.M.H., by and through his parents,  
61 alleging negligence on the part of DCF and its providers which  
62 allowed the perpetration of sexual abuse against and the  
63 victimization of C.M.H. by J.W., and

64 WHEREAS, a mutually agreeable settlement could not be  
65 reached, and a jury trial was held in Palm Beach County, and

66 WHEREAS, on January 2, 2014, after a jury trial and  
67 verdict, the court entered a judgment against DCF for  
68 \$5,176,543.08, including costs, and

69 WHEREAS, the Division of Risk Management of the Department  
70 of Financial Services paid the family of C.M.H. \$100,000, the  
71 statutory limit at that time under s. 768.28, Florida Statutes,  
72 and

73 WHEREAS, C.M.H., now a young adult, is at a vulnerable  
74 stage in his life and urgently needs to recover the balance of  
75 the judgment awarded him so that his psychiatric injuries may be  
76 addressed and he may lead a normal life, and

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

80  
81 Be It Enacted by the Legislature of the State of Florida:

82  
83 Section 1. The facts stated in the preamble to this act are  
84 found and declared to be true.

85 Section 2. There is appropriated from the General Revenue  
86 Fund to the Department of Children and Families the sum of  
87 \$5,076,543.08 for the relief of C.M.H. for the personal injuries

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88 and damages he sustained. After payment of attorney fees and  
89 costs, lobbying fees, and other similar expenses relating to  
90 this claim, the remaining funds shall be placed into an  
91 irrevocable trust created for C.M.H. for his exclusive use and  
92 benefit.

93 Section 3. The Chief Financial Officer is directed to draw  
94 a warrant in favor of C.M.H. in the sum of \$5,076,543.08 upon  
95 funds of the Department of Children and Families in the State  
96 Treasury, and the Chief Financial Officer is directed to pay the  
97 same out of such funds in the State Treasury not otherwise  
98 appropriated.

99 Section 4. The amount paid by the Department of Children  
100 and Families pursuant to s. 768.28, Florida Statutes, and the  
101 amount awarded under this act are intended to provide the sole  
102 compensation for all present and future claims arising out of  
103 the factual situation described in the preamble to this act  
104 which resulted in the personal injuries and damages to C.M.H.  
105 The total amount of attorney fees relating to this claim may not  
106 exceed 25 percent of the amount awarded under this act.

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