

Bill No. SB 18

Amendment No. 1 Barcode 515558

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on Children and Families recommended the following amendment:

Senate Amendment (with title amendment)

On page 1, line 17, through page 5, line 26, delete those lines

and insert:

WHEREAS, Laura Bailey and Christina Decker, developmentally disabled adults unable to care for themselves, were institutionalized in various facilities on the grounds of Tacachale and were wholly dependent upon the care, custody, and control of the Department of Children and Family Services and its employees, Rachuel Sercey and Evertice Cole, and

WHEREAS, on April 19, 1998, Rachuel Sercey lost control of a facility-owned van that flipped and ejected Laura Bailey and Christina Decker from the vehicle, and

WHEREAS, Laura Bailey and Christina Decker subsequently died from their injuries, and

WHEREAS, Laura Bailey, Christina Decker, and their guardians relied upon the Department of Children and Family

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1 Services and its staff to provide for their safety and welfare
2 and to make the proper decisions on their behalf concerning
3 their day-to-day activities, and

4 WHEREAS, the facility-owned vehicle involved in the
5 accident which is the subject of litigation was improperly and
6 negligently maintained by the facility, including, but not
7 limited to, negligent maintenance of the right rear tire on
8 the van, and

9 WHEREAS, for almost 15 years before the accident,
10 Rachuel Sercey worked at Tacachale, and

11 WHEREAS, before the accident, Rachuel Sercey was
12 arrested and cited on numerous occasions for driving
13 infractions and substance-abuse-related charges and was
14 reprimanded by Tacachale for deviation from a trip ticket and
15 neglecting residents in her care, and

16 WHEREAS, notwithstanding this history of which the
17 Department of Children and Family Services knew or should have
18 known, the department permitted Rachuel Sercey to drive
19 residents in facility-owned vehicles for facility purposes,
20 and

21 WHEREAS, the Department of Children and Family Services
22 did not require mandatory drug testing of facility staff, nor
23 did it conduct routine background checks on facility staff,
24 and

25 WHEREAS, before April 19, 1998, Tacachale staff
26 submitted for approval a request that certain residents be
27 allowed to attend a picnic field trip to Ginnie Springs, which
28 request was approved by agents and employees of the Department
29 of Children and Family Services, and

30 WHEREAS, Laura Bailey and Christina Decker were among
31 those residents scheduled to attend the Ginnie Springs field

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1 trip, and

2 WHEREAS, on April 19, 1998, plaintiffs Laura Bailey,
3 Christina Decker, and five developmentally disabled adult
4 women were loaded into a facility-owned van along with two
5 staff personnel, Evertice Cole and Rachuel Sercey, and

6 WHEREAS, the van was owned and maintained by the
7 Department of Children and Family Services and used for the
8 purpose of transporting facility residents, and

9 WHEREAS, even though the van was designed to
10 accommodate eight persons and was equipped with only eight
11 seatbelts, Evertice Cole and Rachuel Sercey allowed nine
12 occupants, including the seven developmentally disabled women,
13 to enter the van, and

14 WHEREAS, of these nine occupants, Evertice Cole and
15 Rachuel Sercey sat in the front two seats with seatbelts,
16 ensuring that at least one resident had no access to a
17 seatbelt at the outset of the field trip, and

18 WHEREAS, the security guard at the Tacachale front gate
19 was responsible for inspecting the paperwork authorizing the
20 outing to Ginnie Springs and ensuring that all occupants were
21 properly restrained and was otherwise required to ensure the
22 safety of the van's occupants, and

23 WHEREAS, the security guard failed to ensure that all
24 occupants were wearing their seatbelts, that the van had the
25 appropriate number of occupants, and that the right rear tire
26 of the van was properly inflated, and

27 WHEREAS, on April 19, 1998, Rachuel Sercey and Evertice
28 Cole were in the course and scope of their employment when
29 they took Laura Bailey, Christina Decker, and other residents
30 on the scheduled field trip, and

31 WHEREAS, after leaving the facility and instead of

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1 going to Ginnie Springs, Laura Bailey, Christine Decker, and
2 the other residents were taken to a location where Rachuel
3 Sercey and Evertice Cole illegally consumed drugs and alcohol,
4 leaving Laura Bailey, Christina Decker, and the other
5 residents improperly supervised and unattended during this
6 time, and

7 WHEREAS, after illegally consuming drugs and alcohol,
8 Rachuel Sercey and Evertice Cole returned to the unsupervised
9 residents and began to drive back to Tacachale, with Rachuel
10 Sercey at the wheel, and

11 WHEREAS, Rachuel Sercey, without protest from Evertice
12 Cole, operated the van in a negligent, reckless, and dangerous
13 manner, including, but not limited to, driving at excessive
14 speeds and ignoring an under-inflated right rear tire, and

15 WHEREAS, Evertice Cole had a duty to intervene on
16 behalf of the occupants of the facility-owned van and prevent
17 the accident, but did nothing to prevent Rachuel Sercey from
18 causing the accident, and

19 WHEREAS, the representatives of the deceased and
20 insured have been required to retain counsel and otherwise
21 incur expenses and costs as a result of the actions of the
22 Department of Children and Family Services and its employees,
23 and

24 WHEREAS, the Department of Children and Family Services
25 agreed in October 2001, not to oppose a claims bill up to the
26 amount of \$400,000, and the Division of Risk Management has
27 already paid the statutory limit of \$200,000 on behalf of the
28 department, and

29 WHEREAS, of the remaining \$400,000 balance on the
30 claim, after payment of attorney's fees and costs in the
31 amount of \$84,000, \$246,000 is to be paid to Kathleen McCarty

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1 and \$70,000 is to be paid to George Decker and Joan Decker,
2 NOW, THEREFORE,

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

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

8 Section 2. There is appropriated from the General
9 Revenue Fund to the Department of Children and Family Services
10 the sum of \$400,000 for the relief of Kathleen McCarty,
11 individually and as personal representative of the Estate of
12 Laura Bailey, and for the relief of George Decker and Joan
13 Decker, individually and as co-personal representatives of the
14 Estate of Christina Decker, for injuries and damages
15 sustained. After payment of statutory attorney's fees and
16 costs, the proceeds recovered through the passage of this act
17 shall be apportioned in the following manner: \$246,000 to be
18 paid to Kathleen McCarty, individually and as personal
19 representative of the Estate of Laura Bailey; and \$70,000 to
20 be paid to George Decker and Joan Decker, individually and as
21 co-personal representatives of the Estate of Christina Decker.

22 Section 3. The Comptroller is directed to draw a
23 warrant in favor of Kathleen McCarty, individually and as
24 personal representative of the Estate of Laura Bailey, in the
25 sum of \$246,000 upon funds of the Department of Children and
26 Family Services in the State Treasury and the State Treasurer
27 is directed to pay the same out of such funds in the State
28 Treasury.

29 Section 4. The Comptroller is directed to draw a
30 warrant in favor of George Decker and Joan Decker,
31 individually and as co-personal representatives of the Estate

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1 of Christina Decker, in the sum of \$70,000 upon funds of the
2 Department of Children and Family Services in the State
3 Treasury and the State Treasurer is directed to pay the same
4 out of such funds in the State Treasury.

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

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9 ===== T I T L E A M E N D M E N T =====

10 And the title is amended as follows:

11 On page 1, lines 1-15, delete those lines

12

13 and insert:

14 An act for the relief of Kathleen McCarty,
15 individually and as personal representative of
16 the Estate of Laura Bailey, deceased, and
17 George Decker and Joan Decker, individually and
18 as co-personal representatives of the Estate of
19 Christina Decker; providing appropriations to
20 compensate them for losses sustained as a
21 result of the actions of the Department of
22 Children and Family Services; providing an
23 effective date.

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