

By the Committee on Finance and Taxation; and Senator Holzendorf

314-2151-02

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A bill to be entitled
An act for the relief of Kathleen McCarty,
individually and as personal representative of
the Estate of Laura Bailey, deceased, and
George Decker and Joan Decker, individually and
as co-personal representatives of the Estate of
Christina Decker; providing appropriations to
compensate them for losses sustained as a
result of the actions of the Department of
Children and Family Services; providing an
effective date.

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

WHEREAS, the facility-owned vehicle involved in the
accident which is the subject of litigation was improperly and
negligently maintained by the facility, including, but not

1 limited to, negligent maintenance of the right rear tire on
2 the van, and

3 WHEREAS, for almost 15 years before the accident,
4 Rachuel Sercey worked at Tacachale, and

5 WHEREAS, before the accident, Rachuel Sercey was
6 arrested and cited on numerous occasions for driving
7 infractions and substance-abuse-related charges and was
8 reprimanded by Tacachale for deviation from a trip ticket and
9 neglecting residents in her care, and

10 WHEREAS, notwithstanding this history of which the
11 Department of Children and Family Services knew or should have
12 known, the department permitted Rachuel Sercey to drive
13 residents in facility-owned vehicles for facility purposes,
14 and

15 WHEREAS, the Department of Children and Family Services
16 did not require mandatory drug testing of facility staff, nor
17 did it conduct routine background checks on facility staff,
18 and

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

24 WHEREAS, Laura Bailey and Christina Decker were among
25 those residents scheduled to attend the Ginnie Springs field
26 trip, and

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

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1 WHEREAS, the van was owned and maintained by the
2 Department of Children and Family Services and used for the
3 purpose of transporting facility residents, and

4 WHEREAS, even though the van was designed to
5 accommodate eight persons and was equipped with only eight
6 seatbelts, Evertice Cole and Rachuel Sercey allowed nine
7 occupants, including the seven developmentally disabled women,
8 to enter the van, and

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

13 WHEREAS, the security guard at the Tacachale front gate
14 was responsible for inspecting the paperwork authorizing the
15 outing to Ginnie Springs and ensuring that all occupants were
16 properly restrained and was otherwise required to ensure the
17 safety of the van's occupants, and

18 WHEREAS, the security guard failed to ensure that all
19 occupants were wearing their seatbelts, that the van had the
20 appropriate number of occupants, and that the right rear tire
21 of the van was properly inflated, and

22 WHEREAS, on April 19, 1998, Rachuel Sercey and Evertice
23 Cole were in the course and scope of their employment when
24 they took Laura Bailey, Christina Decker, and other residents
25 on the scheduled field trip, and

26 WHEREAS, after leaving the facility and instead of
27 going to Ginnie Springs, Laura Bailey, Christine Decker, and
28 the other residents were taken to a location where Rachuel
29 Sercey and Evertice Cole illegally consumed drugs and alcohol,
30 leaving Laura Bailey, Christina Decker, and the other
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1 residents improperly supervised and unattended during this
2 time, and

3 WHEREAS, after illegally consuming drugs and alcohol,
4 Rachuel Sercey and Evertice Cole returned to the unsupervised
5 residents and began to drive back to Tacachale, with Rachuel
6 Sercey at the wheel, and

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

11 WHEREAS, Evertice Cole had a duty to intervene on
12 behalf of the occupants of the facility-owned van and prevent
13 the accident, but did nothing to prevent Rachuel Sercey from
14 causing the accident, and

15 WHEREAS, the representatives of the deceased and
16 insured have been required to retain counsel and otherwise
17 incur expenses and costs as a result of the actions of the
18 Department of Children and Family Services and its employees,
19 and

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

25 WHEREAS, of the remaining \$400,000 balance on the
26 claim, after payment of attorney's fees and costs in the
27 amount of \$84,000, \$246,000 is to be paid to Kathleen McCarty
28 and \$70,000 is to be paid to George Decker and Joan Decker,
29 NOW, THEREFORE,

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

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

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

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

24 Section 4. The Comptroller is directed to draw a
25 warrant in favor of George Decker and Joan Decker,
26 individually and as co-personal representatives of the Estate
27 of Christina Decker, in the sum of \$70,000 upon funds of the
28 Department of Children and Family Services in the State
29 Treasury and the State Treasurer is directed to pay the same
30 out of such funds in the State Treasury.

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

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4 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
5 COMMITTEE SUBSTITUTE FOR
6 SB 18

7 The Committee Substitute changes the amount of the
8 appropriation from \$7 million to \$400,000. After payment of
9 statutory attorney's fees and costs, the bill provides for
10 Kathleen McCarty, as personal representative of the Estate of
11 Laura Bailey, the sum of \$246,000 and provides for George and
12 Joan Decker, as co-personal representatives of the Estate of
13 Christina Decker, the sum of \$70,000 and directs the
14 Comptroller to draw a warrant for said amounts.
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