

BILL TEXT:

STATE OF NEW YORK

435

2005-2006 Regular Sessions

IN ASSEMBLY

January 12, 2005

Introduced by M. of A. WEISENBERG -- Multi-Sponsored by -- M. of A. HOOPER, SWEENEY -- read once and referred to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to prohibiting civil actions against victims of crime brought by any person convicted of such crime

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative intent. The legislature hereby declares that it
2 is the public policy of this state that once an individual steps outside
3 the boundaries of society by committing a felony, such person shall be
4 prohibited from using the court system to seek redress for injuries
5 received during the commission of such felony. The felon shall be
6 presumed to have assumed the risk of his or her actions.

7 § 2. The civil practice law and rules is amended by adding a new
8 section 1411-a to read as follows:

9 § 1411-a. Recovery barred in certain instances. 1. In any action to
10 recover damages for personal injury, injury to property, or wrongful
11 death, any culpable conduct of the claimant or decedent resulting in a
12 felony conviction shall be a complete bar to recovery in such action.

13 2. If the claimant does not prevail in a civil action pursuant to
14 subdivision one of this section, the court shall award reasonable
15 expenses, including but not limited to attorneys' fees and disbursements
16 to all respondents.

17 § 3. Section 1412 of the civil practice law and rules, as added by
18 chapter 69 of the laws of 1975, is amended to read as follows:

19 § 1412. Burden of pleading; burden of proof. Culpable conduct
20 claimed in diminution of damages, in accordance with section fourteen
21 hundred eleven of this article, or as a complete bar to recovery in
22 accordance with section fourteen hundred eleven-a of this article, shall
23 be an affirmative defense to be pleaded and proved by the party assert-
24 ing the defense.

25 § 4. This act shall take effect immediately and shall apply to inju-
26 ries occurring on or after such date.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD00688-01-5

SPONSORS MEMO:

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(e)

BILL NUMBER: A435

SPONSOR: Weisenberg (MS)

TITLE OF BILL:

An act to amend the civil practice law and rules, in relation to prohibiting civil actions against victims of crime brought by any person convicted of such crime

PURPOSE OR GENERAL IDEA OF BILL:

To prohibit a convicted felon from suing for civil damages for injuries stemming from the commission of a felony.

SUMMARY OF SPECIFIC PROVISIONS:

Section 1411 of the Civil Practice Law and Rules, as added by chapter 69 of the laws of 1975, is amended. Section 1412 of the Civil Practice Law and Rules, as added by chapter 69 of the laws of 1975, is amended.

JUSTIFICATION:

On June 28, 1984, Bernard McCummings and two accomplices mugged and beat a 71 year old man in New York City. During the mugging, police officer Manual Rodriguez shot McCummings when he lunged at him. As a result of the shooting, McCummings was paralyzed, and sued the City of New York for excessive force. A Manhattan jury awarded McCummings \$4.2 million, and the State's Supreme Court Appellate Division upheld the verdict. To quote Newsday, "Bernard McCummings... learned from an appeals court yesterday that for him crime did pay, and it paid big" (Newsday, February 21, 1992).

In 1975, New York State eliminated the assumption of risk defense to a civil action. In its place, the legislature adopted the doctrine of comparative negligence, where, even if a plaintiff is 99% of the cause of his or her own injuries, they could still recover. Under this law, even a convicted criminal who is injured during the commission of a felony could recover from those injuries. This result is clearly against public policy which has been enunciated by the New York State Court of Appeals. In the landmark case of **BARKER V. KALLASH**, 63 N.Y. 2d 19 (1984), the court stated "...when the plaintiff has engaged in activities prohibited as opposed to merely regulated, by law, the courts will not entertain the suit if the plaintiff's conduct constituted a serious violation of the law and the injuries for which he seeks recovery were the direct result of that violation. In the latter instance, recovery is denied, not because the plaintiff contributed to his injury, but because the public policy of this State generally denies judicial relief to those injured in the course of committing a serious criminal act." 63 N.Y. 2d at 24.

Arguments are made to the effect that the current comparative negligence system will prevent criminals from recovering for his or her damages by allowing the jury to find that person completely responsible for the injuries. However, this is after a full trial with discovery, which costs municipalities, insurance rate payers and homeowners significant litigation costs. This bill would permit a motion to dismiss at the threshold of the trial. New Yorkers are outraged, and rightly so, that a criminal can commit a crime, and then sue for damages. Once a person steps outside the rules of civilized society to commit a crime, that

RETRIEVE BILL

person should not be able to step back into the civil system to try to recover for any personal injuries that happen because of their criminal behavior. As a society, we should send a message to criminals that anyone who commits a felony takes a risk, not only of arrest and prosecution, but also, that they will be shut out from the civil justice system if they are injured during the commission of that felony.

LEGISLATIVE HISTORY:

2004 A.3958 - Referred to Codes - S.514-Passed Senate
2002 A.5085 - Referred to Codes - S.862-Passed Senate
2000 A.1409-B - Referred to Codes

FISCAL IMPLICATIONS:

None.

EFFECTIVE DATE:

This act shall take effect immediately.
