

BILL TEXT:

STATE OF NEW YORK

3205

2005-2006 Regular Sessions

IN ASSEMBLY

February 1, 2005

Introduced by M. of A. McLAUGHLIN -- read once and referred to the
Committee on Governmental Operations

AN ACT to amend the executive law, the civil practice law and rules and
the tax law, in relation to personal injury awards for injuries
sustained by convicted violent felony offenders during the commission
or as a direct result of a crime

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

1 Section 1. The executive law is amended by adding a new section 634-a
2 to read as follows:

3 § 634-a. Receivership; civil awards convicted violent felony offen-
4 ders. 1. Upon receipt of a copy of a summons and complaint as provided
5 in section one thousand twenty-seven of the civil practice law and
6 rules, the board shall immediately take such actions as are necessary to
7 notify all known victims, if any, during the ten year period prior to
8 the commencement of the action, of the commencement of the civil action
9 and their ability to file a claim with the board upon notice of an award
10 in such action, by certified mail, return receipt requested, where the
11 victims' names and addresses are known by the board.

12 2. Notwithstanding any provisions of the civil practice law and rules
13 to the contrary, in a civil action commenced by an individual convicted
14 of a violent felony offense to recover for personal injuries sustained
15 either during the commission of such offense, while fleeing from such
16 offense or as a direct result of such offense, the board shall be
17 appointed by the court as receiver of any award in such action for a
18 period of ten years, which term can be extended upon the board's appli-
19 cation for good cause shown, for an additional ten year period, and the
20 board shall receive a receivership fee of twenty percent of such award
21 at the time such award is made. The board shall deposit the balance of
22 such award in an escrow account for the benefit and payable to any

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

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1 victim or the legal representative of any victim of crimes committed by
2 such individual.

3 3. The board shall upon receiving notice from the court of an award in
4 such civil action, notify the victims by certified mail, return receipt
5 requested of the award, and provide a claim form for the victim to file
6 a claim with the board.

7 4. The board shall after taking its fee as receiver distribute the
8 remaining funds as follows:

9 (a) twenty percent of the award to the board;

10 (b) all fees due and owing the attorneys having represented such indi-
11 vidual in the civil action;

12 (c) reimburse all health care insurance providers for payments made to
13 medical providers on behalf of such individual in relation to the inju-
14 ries alleged in the civil action;

15 (d) reimburse the local and state government for the following
16 expenses incurred during the ten years prior to the commencement of the
17 civil action with respect to such individual:

18 (1) all expenses related to representation by the public defender;

19 (2) all court costs related to such prosecutions;

20 (3) all costs related to incarceration;

21 (4) all benefits distributed by social services agencies; and

22 (5) all unemployment insurance benefits;

23 (e) reimburse the local and state government for the anticipated costs
24 of incarceration of such individual from the time the civil action is
25 commenced until the expiration of the term of such individual's sentence
26 of imprisonment;

27 (f) notwithstanding any inconsistent provision of the estates, powers
28 and trusts law or the civil practice law and rules with respect to the
29 timely bringing of an action, to the victim of the specific criminal act
30 involved in the civil action an amount not to exceed three and one-half
31 times the victim's actual out-of-pocket expenses and pain and suffering,
32 less any amount previously awarded by the board;

33 (g) notwithstanding any inconsistent provision of the estates, powers
34 and trusts law or the civil practice law and rules with respect to the
35 timely bringing of an action, to all victims of crimes committed by such
36 individual in the ten years immediately preceding the commencement of
37 the civil action an amount not to exceed three times their actual out-
38 of-pocket expenses, less any amount previously awarded by the board; and

39 (h) the balance of such escrow account, less the interest accrued by
40 such account, to the individual commencing such civil action.

41 5. The board shall establish such rules and regulations as are neces-
42 sary for the implementation of this section.

43 § 2. The civil practice law and rules is amended by adding a new
44 section 1027 to read as follows:

45 § 1027. Service of summons and complaint; crime victims board. In an
46 action commenced by a person convicted of a violent felony offense for
47 personal injuries sustained either during the commission of such offense
48 or while fleeing such offense, such person shall serve a copy of the
49 summons and complaint on the chairman of the crime victims board.

50 § 3. The tax law is amended by adding a new section 612-a to read as
51 follows:

52 § 612-a. Lump sum distribution crime victims board. There is hereby
53 levied and imposed a tax on the funds distributed to a person convicted
54 of a violent felony offense pursuant to section six hundred
55 thirty-four-a of the executive law in the amount of ten percent of the

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1 total award in such action. Such tax shall be due upon distribution of
 2 such funds.

3 § 4. This act shall take effect on the first of January next succeed-
 4 ing the date on which it shall have become a law, except that any rules
 5 and regulations necessary for the timely implementation of this act on
 6 its effective date are authorized and directed to be promulgated on or
 7 before such date.

SPONSORS MEMO:

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

BILL NUMBER: A3205

SPONSOR: McLaughlin

TITLE OF BILL: An act to amend the executive law, the civil practice law and rules and the tax law, in relation to personal injury awards for injuries sustained by convicted violent felony offenders during the commission or as a direct result of a crime

PURPOSE OR GENERAL IDEA OF BILL:

To require that civil judgments awarded to criminals as a result of injuries sustained during the commission or as a direct result of certain felonies be placed into receivership for a minimum of ten years so that the victims of the criminal and society may recover damages from the criminal's award.

SUMMARY OF SPECIFIC PROVISIONS:

The bill requires that judges and juries awarding civil judgments to persons for injuries sustained during the commission of a violent felony, or a direct result of such felony, place the judgment in receivership for ten years and appoint the Crime Victims Board (CVB) as receiver. Once the receivership is established, the CVB is to notify all known and possible victims of this or any other criminal act by the felon so that claims may be filed for damages against the award. The CVB is authorized to distribute awards to qualifying claims at a rate of three-and-one-half times the actual damages suffered by victims of the crime. In addition, all victims of the crimes committed by the individual within the past 10 years can claim treble damages.

In addition to reimbursing crime victims from the criminal's funds, the Crime Victims Board is granted a fee of 20 percent to manage the receivership and permitted another 20 percent for the Crime Victims Compensation Fund. Also, any public costs, including those for health care and hospitalization, public defenders, court time, prosecution, and incarceration, can also be recovered from the felon's award.

Finally, after ten years, the remaining award monies are transferred to the individual, subject to a 10 percent state tax. The CVB is empowered to extend the life of the receivership if it has reason to believe there may be further claims filed.

JUSTIFICATION:

Tragically, in several instances, the courts uphold a felon's right to

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sue law enforcement personnel in cases where the felon claims excessive force was used to apprehend him.

In a recently decided Court of Appeals case,

MCCUMMINGS V. NEW YORK

CITY TRANSIT AUTHORITY, the majority held that the standard to justify the use of deadly force by law enforcement in defending a charge of criminal conduct does not apply in negligence or civil cases.

As a result, McCummings, who was paralyzed from a bullet fired by a transit police officer while in the course of fleeing the crime scene, was awarded a \$4.3 million verdict. In another case, a prisoner serving time for killing a New York City police officer was recently awarded a \$600,000 settlement because of the stress he allegedly suffered while incarcerated. Clearly, there is something wrong with the system when a convicted criminal can profit from his or her crime.

This bill, if enacted into law, would preserve a criminal's constitutional right to sue but would place the jury award in receivership, against which any claims could be made.

Several attempts to exonerate police officers of liability in civil suits filed by felons have been struck down by the courts. By establishing such jury awards as receiverships, this bill will withstand constitutional scrutiny and help to insure that crime victims are compensated and felons not unjustly rewarded.

PRIOR LEGISLATIVE HISTORY:

1997-98 - A117: Referred to Governmental Operations
1999 - A.1264: Referred to Governmental Operations
1999 - A.1264-A: Referred to Governmental Operations
2001-02 - A.2575: Referred to Governmental Operations
2003-04 - A.2529: Referred to Governmental Operations

FISCAL IMPLICATIONS:

The state will receive additional revenue from the tax and from reimbursement for costs associated with prosecution and incarceration of violent felons.

EFFECTIVE DATE:

This act shall take effect on the first of January next succeeding the date on which it shall have become law, except that any rules and regulations necessary for the timely implementation of this act on its effective date shall be promulgated on or before such date.
