

## BILL TEXT:

## STATE OF NEW YORK

930

2005-2006 Regular Sessions

## IN SENATE

January 21, 2005

Introduced by Sens. BALBONI, ALESI, FARLEY, FUSCHILLO, GOLDEN, LARKIN, LAVALLE, LIBOUS, LITTLE, MALTESE, MARCELLINO, MAZIARZ, MORAHAN, NOZZOLIO, PADAVAN, RATH, SALAND, SKELOS, TRUNZO, VOLKER, WINNER, WRIGHT -- read twice and ordered printed, and when printed to be committed 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

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

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1 accordance with section fourteen hundred eleven-a of this article, shall  
 2 be an affirmative defense to be pleaded and proved by the party assert-  
 3 ing the defense.  
 4 § 4. This act shall take effect immediately and shall apply to inju-  
 5 ries occurring on or after such date.

**SPONSORS MEMO:**

**NEW YORK STATE SENATE  
 INTRODUCER'S MEMORANDUM IN SUPPORT  
 submitted in accordance with Senate Rule VI. Sec 1**

**BILL NUMBER:** S930**SPONSOR:** BALBONI

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

**SUMMARY OF PROVISIONS:** Section 1 establishes legislative findings and intent. Section 2 of the bill amends the Civil Practice Law and Rules by adding a new section 1411-a to bar recovery for civil damages for injuries stemming from any culpable conduct of the claimant or decedent resulting in a felony conviction. Furthermore, if the claimant does not prevail in a civil action, the court shall award reasonable expenses to all respondents. Section 3 of the bill amends section 1412 of the Civil Practice Law and Rules to include the complete bar to recovery in accordance with section 1411-a as an affirmative defense. Section 4 establishes an effective date.

**JUSTIFICATION:** On June 28, 1984, Bernard McCummings and two accomplices mugged and beat a 71 year old man in a train station in New York City. During the mugging, police officer Manuel 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 dollars, and the States Supreme Court's 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 defense to a civil action of "assumption of risk." In its place, the legislature adopted the doctrine of comparative negligence, where, even if a plaintiff is 99% responsible for 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 still 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), 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

**RETRIEVE BILL**

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 24). In 1997, the Court of Appeals, in Manning v. Brown (91 N.Y. 2d 116), once again relied on Barker in reaching its decision. The Court determined that a plaintiff who knowingly participates in conduct that is entirely prohibited by law is precluded from recovering for injuries resulting from that conduct. (91 N.Y. 2d 120). 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. This is after a full trial with discovery however, 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 understandably outraged that a criminal can commit a crime, be injured as a result of the crime and then sue for damages. Once a person steps outside the established rules of civilized society to commit a crime, that person should not be able to step back into the civil system to try to recover for any personal injuries that occur as a result 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 - S.514 Passed Senate 47-14  
 2003 - S.514 Passed Senate 46-14  
 2002 - S.862 Passed Senate 44-16  
 2001 - S.862 Passed Senate 40-14  
 2000 - S.1481-B Passed Senate 46-13  
 1999 - S.1481-A Passed Senate 44-15  
 1998 - S.4248-B Passed Senate 48-12  
 1997 - S.4248 Referred to Codes

**FISCAL IMPLICATIONS:** This measure could result in significant cost savings to local governments that do not need to incur the costs associated with a full trial and litigation resulting from a suit brought by convicted felons seeking to recover for injuries sustained in the commission of a felony.

**EFFECTIVE DATE:** This act shall take effect immediately.