

PROGRAM BILL BILL #20

Legislative Bill Drafting Commission
12021-01-6

S. Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

A. Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

CIVRILA
(Enacts the "New York state Bivens
act")

Civ Rts. deprivation of rights

AN ACT

to amend the civil rights law, in
relation to enacting the "New York
state Bivens act"

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

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal:

- s15 Addabbo s46 Fahy s16 Liu s13 Ramos s35 Stewart-
s43 Ashby s34 Fernandez s04 Martinez s05 Rhoads Cousins
s36 Bailey s60 Gallivan s07 Martins s33 Rivera s22 Sutton
s63 Baskin s12 Gianaris s02 Mattera s39 Rolison s44 Tedisco
s57 Borrello s59 Gonzalez s48 May s50 Ryan, C. s49 Walczyk
s25 Brisport s26 Gouardes s37 Mayer s18 Salazar s52 Webb
s55 Brouk s53 Griffo s03 Murray s10 Sanders s38 Weber
s06 Bynoe s40 Harckham s20 Myrie s23 Scarcella- s08 Weik
s09 Canzoneri- s54 Helming s51 Oberacker Spanton s47
Fitzpatrick s41 Hinchey s58 O'Mara s32 Sepulveda s61
s17 Chan s31 Jackson s62 Ortt s29 Serrano
s30 Cleare s27 Kavanagh s01 Palumbo s42 Skoufis
s14 Comrie s28 Krueger s21 Parker s11 Stavisky
s56 Cooney s24 Lanza s19 Persaud s45 Stec

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

- a078 Alvarez a143 Chludzinski a083 Heastie a016 Norber a114 Simpson
a031 Anderson a136 Clark a028 Hevesi a045 Novakhov a094 Slater
a121 Angelino a047 Colton a035 Hooks a011 O'Pharrow a005 Smith
a133 Bailey a140 Conrad a128 Hunter a091 Otis a118 Smullen
a120 Barclay a032 Cook a029 Hyndman a132 Palmesano a022 Solages
a106 Barrett a039 Cruz a079 Jackson a088 Paulin a110 Steck
a105 Beephan a043 Cunningham a104 Jacobson a141 Peoples- a010 Stern
a107 Bendett a077 Dais a134 Jensen Stokes a127 Stirpe
a082 Benedetto a053 Davila a004 Kassay a023 Pheffer a102 Tague
a027 Berger a072 De Los Santos a100 Kay Amato a064 Tannousis
a042 Bichotte a003 DeStefano a125 Kelles a063 Pirozolo a086 Tapia
Hermelyn a054 Dilan a040 Kim a089 Pretlow a071 Taylor
a117 Blankenbush a081 Dinowitz a069 Lasher a019 Ra a085 Torres
a015 Blumencranz a147 DiPietro a013 Lavine a030 Raga a037 Valdez
a144 Bologna a009 Durso a065 Lee a038 Rajkumar a033 Vanel
a073 Bores a099 Eachus a126 Lemondes a006 Ramos a055 Walker
a098 Brabenc a048 Eichenstein a095 Levenberg a062 Reilly a112 Walsh
a026 Braunstein a061 Fall a060 Lucas a087 Reyes a024 Weprin
a138 Bronson a008 Fitzpatrick a135 Lunsford a149 Rivera a097 Wieder
a046 Brook-Krasny a057 Forrest a123 Lupardo a109 Romero a059 Williams
a020 Brown, E. a124 Friend a129 Magnarelli a067 Rosenthal a113 Woerner
a012 Brown, K. a050 Gallagher a101 Maher a025 Rozic a070 Wright
a093 Burdick a131 Gallahan a130 Manktelow a111 Santabarbara a041 Yeger
a142 Burke a007 Gandolfo a108 McDonald a090 Sayegh a080 Zaccaro
a018 Burroughs a068 Gibbs a014 McDonough a001 Schiavoni a056 Zinerman
a119 Buttenschon a002 Giglio a146 McMahan a076 Seawright a036
a096 Carroll, P. a066 Glick a137 Meeks a148 Sempolinski a074
a044 Carroll, R. a034 Gonzalez- a017 Mikulin a084 Septimo
a115 Cashman Rojas a122 Miller a092 Shimsky
a058 Chandler- a116 Gray a051 Mitaynes a103 Shrestha
Waterman a021 Griffin a150 Molitor a052 Simon
a049 Chang a139 Hawley a145 Morinello a075 Simone

1) Single House Bill (introduced and printed separately in either or
both houses). Uni-Bill (introduced simultaneously in both houses and printed
as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 1
signed copy of bill and 1 copy of memorandum in support (single house);
or 2 signed copies of bill and 2 copies of memorandum in support (uni-bill).

1 Section 1. Short title. This act shall be known and may be cited as
2 the "New York state Bivens act".

3 § 2. The civil rights law is amended by adding a new article 8-A to
4 read as follows:

5 ARTICLE 8-A

6 NEW YORK STATE BIVENS ACT

7 Section 85. Legislative intent.

8 86. Action for deprivation of constitutional rights by federal
9 officials acting under color of law.

10 87. Applicability to state and local officials.

11 88. Rule of construction.

12 89. Severability.

13 § 85. Legislative intent. 1. The people of the state of New York must
14 be guaranteed meaningful remedies, including but not limited to those
15 provided through the courts, when their constitutional rights are
16 violated by federal officials. Recent United States Supreme Court deci-
17 sions have curtailed the availability of such remedies against federal
18 officials under Bivens v. Six Unknown Named Agents, 408 U.S. 388 (1971).
19 The Supreme Court has repeatedly declined to extend damages actions to
20 new contexts and thereby left many victims of constitutional violations
21 without recourse.

22 2. a. Federal civil rights law, 42 U.S.C. § 1983, provides a private
23 right of action to recover damages and seek injunctive relief against
24 state and/or local officials when they violate an individual's constitu-
25 tional right while acting under color of law subject to available
26 defenses including qualified immunity. With respect to federal officers,
27 the Federal Tort Claims Act (FTCA), as amended by the Westfall Act,
28 provides the exclusive avenue for many common law damages actions

1 against federal officers acting within the scope of their employment.
2 The Westfall Act explicitly carves out from the FTCA's exclusive purview
3 "a civil action against an employee of the government which is brought
4 for a violation of the constitution of the United States." 28 U.S.C. §
5 2679(b)(2)(a). The plain text of this provision contains no limitation
6 on the scope of constitutional violations carved out from the FTCA's
7 exclusive purview, recognizing the well-established principle that
8 government agents act outside of the scope of their offices when they
9 violate the constitution.

10 b. While New Yorkers can seek remedies against state and local offi-
11 cial for constitutional violations, there remains a significant remedi-
12 al void for New Yorkers injured by unconstitutional conduct by federal
13 officials. Therefore, the legislature finds it necessary to provide an
14 avenue for claims for damages against any federal official, who, acting
15 under color of any law, statute, ordinance, regulation, custom, or
16 usage, deprives a person of rights secured by the United States Consti-
17 tution. The legislature intends for this statute to fall squarely with-
18 in the provision of the Westfall Act that carves out FTCA claims against
19 federal officials for violations of constitutional rights.

20 c. This article does not, nor is intended to, usurp federal authority,
21 nor does it discriminate against federal officials. This statute under-
22 scores the supremacy of the federal constitution by ensuring that its
23 guarantees remain enforceable for all New Yorkers against all persons
24 acting under color of any law. From the founding era through the nine-
25 teenth century, courts regularly adjudicated state lawsuits against
26 federal officers who exceeded lawful authority. Nothing in the constitu-
27 tion, federal statutes, or United States Supreme Court precedent fore-
28 closes such actions today. The legislature thus finds that New York

1 state may properly act to safeguard its residents' constitutional
2 rights.

3 3. The intent of this statute is to restore a meaningful avenue of
4 accountability consistent with federal supremacy, sovereignty, and the
5 long-standing principle that rights must be paired with remedies, as
6 such remedies already exist for unconstitutional actions taken by state
7 and local officials.

8 4. Accordingly, it is the intent of the legislature that this article
9 should be construed to provide parity between federal officials and
10 state and local officials such that claims brought under this article
11 against federal officials shall be subject to the exact same legal stan-
12 dards, legal defenses, and immunities that are provided to state and
13 local officials for causes of actions brought under 42 U.S.C. § 1983.

14 § 86. Action for deprivation of constitutional rights by federal offi-
15 cial acting under color of law. 1. Liability. Any federal official who,
16 under color of any law, statute, ordinance, regulation, custom, or
17 usage, subjects, or causes to be subjected, any citizen of the United
18 States or other person within the jurisdiction thereof to the depri-
19 vation of any rights, privileges, or immunities secured by the constitu-
20 tion of the United States, shall be liable to the party injured in an
21 action at law, suit in equity, or other proper proceeding for redress,
22 except that in any action brought against a judicial officer for an act
23 or omission taken in such officer's judicial capacity, injunctive relief
24 shall not be granted unless a declaratory decree was violated or declar-
25 atory relief was unavailable.

26 2. Immunity defenses. A defendant in an action under this section may
27 assert any immunity defense to the same extent as a defendant may raise
28 in response to a claim brought under 42 U.S.C. § 1983.

1 3. Remedies. In any action brought under this section, the court may
2 award:

3 a. Compensatory damages, including damages for emotional distress,
4 pain and suffering, and other non-economic damages;

5 b. Punitive damages where the violation is found to be malicious,
6 wanton, willful, or in reckless disregard of the plaintiff's rights;

7 c. Injunctive and declaratory relief; and

8 d. Reasonable attorneys' fees and costs to a prevailing plaintiff,
9 except that in any action brought against a judicial officer for an act
10 or omission taken in such officer's judicial capacity such officer shall
11 not be held liable for any costs, including attorneys' fees, unless such
12 action was clearly in excess of such officer's jurisdiction.

13 § 87. Applicability to state and local officials. In the event that 42
14 U.S.C. § 1983 is repealed or amended such that it removes or otherwise
15 further limits liability against state and/or local officials for
16 constitutional violations, this article shall automatically apply to
17 state and local officials in the same manner in which it applies to
18 federal officials.

19 § 88. Rule of construction. This article shall be construed so that
20 any legal standard, including a standard relating to liability, defense,
21 or immunity, that is applicable in a case brought against a state or
22 local official under 42 U.S.C. 1983 applies in a like action brought
23 against a federal official under this article.

24 § 89. Severability. If any clause, sentence, paragraph, section or
25 part of this act shall be adjudged by any court of competent jurisdic-
26 tion to be invalid, such judgment shall not affect, impair or invalidate
27 the remainder thereof, but shall be confined in its operation to the
28 clause, sentence, paragraph, subdivision, section or part thereof

1 directly involved in the controversy in which such judgment shall have
2 been rendered. It is hereby declared to be the intent of the legislature
3 that this act would have been enacted even if such invalid provisions
4 had not been included herein.

5 § 3. This act shall take effect immediately.