

# STATE OF NEW YORK

405

2017-2018 Regular Sessions

## IN SENATE

(Prefiled)

January 4, 2017

Introduced by Sen. ROBACH -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil rights law, in relation to the right to call for police and emergency assistance and providing victim protections

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

1 Section 1. Article 9 and sections 90 and 91 of the civil rights law,  
2 as renumbered by chapter 310 of the laws of 1962, are renumbered article  
3 10 and sections 100 and 101, and a new article 9 is added to read as  
4 follows:

### ARTICLE 9

#### RIGHT TO CALL POLICE AND EMERGENCY ASSISTANCE/VICTIM PROTECTIONS

#### Section 90. Legislative findings.

9 91. Right to call for police and emergency assistance; victim  
10 protections.

11 92. Protections not applicable to breaches of lease, illicit  
12 activities or other violations of law.

13 93. Right of property owners to be free of penalty for respect-  
14 ing the rights of an occupant to request police or emer-  
15 gency assistance.

16 94. Limitation on right to request police or emergency assist-  
17 ance prohibited.

18 95. Defenses.

19 96. Removal of the perpetrator of violence while assuring  
20 continued occupancy by victim.

21 97. Remedies.

22 98. Guidance authorized.

23 § 90. Legislative findings. No victim of domestic violence, or other  
24 person threatened with violence or in jeopardy of harm, should fail to

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

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1 access police or emergency assistance when needed because of the fear  
2 that doing so may result in losing their housing through eviction or  
3 other actions to remove them from the property. Some local laws or poli-  
4 cies have the effect of treating such requests for police or emergency  
5 aid as a disturbance constituting a "public nuisance" or otherwise  
6 treating the individual faced with the violence and in need of assist-  
7 ance as an undesirable tenant or undesirable influence on the neighbor-  
8 hood based upon a call for help to their home. Legislation is needed to  
9 assure that victims of violence or threats of harm or violence are not  
10 penalized in relation to any law enforcement activity and intervention  
11 necessary to address offender accountability and victim safety.

12 Municipalities throughout the state have increasingly begun to adopt  
13 local laws and ordinances to address public nuisances or other intru-  
14 sions on the quiet enjoyment of their residents and communities. Despite  
15 their intent to aid communities, overly broad ordinances have instead  
16 had a harmful chilling effect deterring victims of violence and crime  
17 from accessing police assistance and have jeopardized public safety.  
18 Given the negative impact that certain provisions have on the community  
19 at large, and to victims of crime in particular, remedial legislation is  
20 necessary that will both protect the rights of domestic violence and  
21 crime victims to access essential police assistance, as well as preserve  
22 the locality's right to address conduct that may undermine the communi-  
23 ty's safety or integrity.

24 The legislature therefore finds that it is desirable to clarify the  
25 law in this area in order to protect women and others from violence and  
26 crime.

27 The legislature further finds that there is a need to assure that  
28 victims of violence, including persons threatened with harm or violence,  
29 have a clear right to access assistance to protect personal or public  
30 safety.

31 The legislature finally finds that clarification in this area will  
32 advance the state's interest in stopping crime and further the aims of  
33 penal laws that depend on citizens to report incidents of crime to law  
34 enforcement.

35 With this remedial legislation the legislature specifically intends  
36 that the coverage of this article includes, but is not limited to, laws  
37 or ordinances that use any form of cumulative point system for the  
38 purpose of identifying any persons or properties who or which would be  
39 subject to municipal enforcement action.

40 § 91. Right to call for police and emergency assistance; victim  
41 protections. 1. Any person who is a victim of domestic violence, as  
42 defined in section four hundred fifty-nine-a of the social services law,  
43 or who otherwise believes he or she is in need of police or emergency  
44 assistance has the right to request such assistance and to be free of  
45 any direct or indirect penalty or reprisal for accessing assistance, or  
46 because he or she resides at a property where domestic violence or other  
47 law enforcement activity occurred. Other than as provided in section  
48 ninety-two of this article, no victim of conduct which has been used as  
49 the grounds for the application of a local law or ordinance established  
50 for the purpose of regulating nuisances shall be directly or indirectly  
51 penalized, or otherwise subject to reprisal by application of such local  
52 law, including by termination or refusal to renew a tenancy or by  
53 eviction.

54 2. No residential occupant shall be required, either orally or in  
55 writing, to waive rights under this article, and any such waiver shall  
56 be void and unenforceable.

1     § 92. Protections not applicable to breaches of lease, illicit activ-  
2 ities or other violations of law. The protections of this article shall  
3 not be deemed to prohibit a municipality from enforcing an ordinance or  
4 local law, nor restrict a landlord from terminating, evicting or refus-  
5 ing to renew a tenancy, when such action is premised upon grounds other  
6 than access of police or emergency assistance or is otherwise premised  
7 on conduct unrelated to the residential occupant's status as a target or  
8 victim of violence or harm.

9     § 93. Right of property owners to be free of penalty for respecting  
10 the rights of an occupant to request police or emergency assistance. No  
11 landlord or other property owner shall be subject to fines or loss of  
12 permits or licenses by a municipality for failing to take steps to  
13 remove an occupant who has exercised rights under this article.

14     § 94. Limitation on right to request police or emergency assistance  
15 prohibited. A municipality, municipal authority, landlord or property  
16 owner shall not prohibit, restrict, penalize or in any other way direct-  
17 ly or indirectly limit any person's exercise of rights under this arti-  
18 cle. The protections of this prohibition shall extend to any residential  
19 occupant upon whose behalf a third party has called for police or emer-  
20 gency assistance.

21     § 95. Defenses. 1. It is a defense to any judicial or administrative  
22 action or proceeding taken by any municipality or municipal authority  
23 enforcing any local law or ordinance that the enforcement action direct-  
24 ly or indirectly penalizes a residential occupant or property owner for  
25 the exercise of rights under this article. Prior to initiation of any  
26 such enforcement action or proceeding all parties and any residential  
27 occupant that may be so impacted shall be given written notice by the  
28 municipality of the protections of this article and shall have the right  
29 to be heard in the action or proceeding to advance the defenses provided  
30 by this article.

31     2. It is a defense in any action or proceeding by a landlord or other  
32 owner of real property to regain possession of that property that the  
33 action or proceeding directly or indirectly penalizes a residential  
34 occupant for the exercise of rights under this article. Any residential  
35 occupant whose right to continued occupancy may be impacted by the  
36 outcome shall be given notice of the action or proceeding by the party  
37 initiating the action or proceeding and shall have the right to appear  
38 as a necessary party in accordance with the provisions of the civil  
39 practice law and rules and the real property actions and proceedings law  
40 in order to advance the defenses provided by this article.

41     § 96. Removal of the perpetrator of violence while assuring continued  
42 occupancy by victim. Actions including termination, eviction or refusal  
43 to renew a leasehold interest or termination of any other form of lawful  
44 occupancy through a judicial proceeding may be carried out against the  
45 perpetrator of such violence or harm. Notwithstanding the terms of an  
46 existing lease, written or oral, or other form of occupancy agreement,  
47 any person with rights described in section ninety-one of this article  
48 shall have the right to continue in occupancy, and the court may so  
49 order, for a term equivalent to the balance of the original term and  
50 under the same terms and conditions as provided in the original lease or  
51 occupancy agreement.

52     § 97. Remedies. Any person or entity aggrieved by a violation of the  
53 protections created by this article shall have the right to bring an  
54 action or special proceeding in a court of appropriate jurisdiction to  
55 seek damages and/or declaratory and injunctive relief with respect to

1 such violation. A prevailing plaintiff may be entitled to an award of  
2 costs and attorney's fees.

3 § 98. Guidance authorized. The New York state office for the  
4 prevention of domestic violence and the division of criminal justice  
5 services, upon consultation with the other, are jointly authorized to  
6 provide guidance with respect to drafting of local nuisance ordinances  
7 and evaluation of their impact on access to police and emergency  
8 services.

9 § 2. This act shall take effect immediately and shall apply to all  
10 pending actions and proceedings.