

STATE OF NEW YORK

2665--A

2019-2020 Regular Sessions

IN ASSEMBLY

January 24, 2019

Introduced by M. of A. LAVINE, LUPARDO, WEPRIN, L. ROSENTHAL, MOSLEY, BRONSON, PEOPLES-STOKES, TITUS, ABINANTI, FAHY, WALKER, ZEBROWSKI, RAIA, SEAWRIGHT, STECK, JAFFEE, GALEF, SOLAGES, OTIS, WEINSTEIN -- Multi-Sponsored by -- M. of A. PERRY, SIMON -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

ARTICLE 9

RIGHT TO CALL POLICE AND EMERGENCY

ASSISTANCE/VICTIM PROTECTIONS

Section 90. Legislative findings.

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

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

93. Right of property owners to be free of penalty for respecting the rights of an occupant to request police or emergency assistance.

94. Limitation on right to request police or emergency assistance prohibited.

95. Defenses.

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

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

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97. Remedies.98. Availability of remedies.

§ 90. Legislative findings. No victim of domestic violence, or other person threatened with violence or in jeopardy of harm, should fail to access police or emergency assistance when needed because of the fear that doing so may result in losing their housing through eviction or other actions to remove them from the property. Some local laws or policies have the effect of treating such requests for police or emergency aid as a disturbance constituting a "public nuisance" or otherwise treating the individual faced with the violence and in need of assistance as an undesirable tenant or undesirable influence on the neighborhood based upon a call for help to their home. Legislation is needed to assure that victims of violence or threats of harm or violence are not penalized in relation to any law enforcement activity and intervention necessary to address offender accountability and victim safety.

Municipalities throughout the state have increasingly begun to adopt local laws and ordinances to address public nuisances or other intrusions on the quiet enjoyment of their residents and communities. Despite their intent to aid communities, overly broad ordinances have instead had a harmful chilling effect deterring victims of violence and crime from accessing police assistance and have jeopardized public safety. They also can unfairly penalize landlords when their tenants need emergency assistance. Courts in New York and other states have found such public ordinances to be unconstitutional because of these harms. Moreover, the U.S. Department of Housing and Urban Development issued guidance in 2016 on how these ordinances can violate the Fair Housing Act's prohibitions on discrimination based on sex, race, disability, and national origin.

Given the negative impact that certain provisions have on the community at large, and to victims of crime in particular, remedial legislation is necessary that will both protect the rights of domestic violence and crime victims and others to access essential police and emergency assistance, as well as preserve the locality's right to address conduct that may undermine the community's safety or integrity.

The legislature therefore finds that it is desirable to clarify the law in this area in order to protect people from violence and crime.

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

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

The legislature finally finds that there is a need to assure that people who need emergency assistance, including persons with disabilities, have a clear right to access assistance without fear of penalty or reprisal.

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

§ 91. Right to call for police and emergency assistance; victim protections. 1. Any person who is a victim of domestic violence, as defined in section four hundred fifty-nine-a of the social services law,

1 or who otherwise believes they are in need of police or emergency
2 assistance has the right to request such assistance and to be free of
3 any direct or indirect penalty or reprisal for accessing assistance, or
4 because they reside at a property where domestic violence or other law
5 enforcement or emergency response activity occurred. Other than as
6 provided in section ninety-two of this article, no victim of conduct
7 which has been used as the grounds for the application of a local law or
8 ordinance established for the purpose of regulating nuisances shall be
9 directly or indirectly penalized, or otherwise subject to reprisal by
10 application of such local law, including by termination or refusal to
11 renew a tenancy or by eviction. These protections shall also extend to
12 any residential occupant upon whose behalf a third party has called for
13 police or emergency assistance.

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

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

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

30 § 94. Limitation on right to request police or emergency assistance
31 prohibited. A municipality, municipal authority, landlord or property
32 owner shall not prohibit, restrict, penalize or in any other way direct-
33 ly or indirectly limit any person's exercise of rights under this arti-
34 cle and any such limitation shall be void as contrary to public policy.
35 The protections of this prohibition shall extend to any residential
36 occupant upon whose behalf a third party has called for police or emer-
37 gency assistance.

38 § 95. Defenses. 1. It is a defense to any judicial or administrative
39 action or proceeding taken by any municipality or municipal authority
40 enforcing any local law or ordinance that the enforcement action direct-
41 ly or indirectly penalizes a residential occupant or property owner for
42 the exercise of rights under this article. Prior to initiation of any
43 such enforcement action or proceeding all parties and any residential
44 occupant that may be so impacted shall be given written notice by the
45 municipality of the protections of this article and shall have the right
46 to be heard in the action or proceeding to advance the defenses provided
47 by this article.

48 2. It is a defense in any action or proceeding by a landlord or other
49 owner of real property to regain possession of that property that the
50 action or proceeding directly or indirectly penalizes a residential
51 occupant for the exercise of rights under this article. Any residential
52 occupant whose right to continued occupancy may be impacted by the
53 action or proceeding shall be given written notice of the action or
54 proceeding and the protections of this article by the party initiating
55 the action or proceeding. The residential occupant shall have the right
56 to appear as a necessary party in accordance with the provisions of the

1 civil practice law and rules and the real property actions and
2 proceedings law in order to advance the defenses provided by this arti-
3 cle.

4 § 96. Removal of the perpetrator of violence while assuring continued
5 occupancy by victim. Actions including termination, eviction or refusal
6 to renew a leasehold interest or termination of any other form of lawful
7 occupancy through a judicial proceeding may be carried out against the
8 perpetrator of such violence or harm. Notwithstanding the terms of an
9 existing lease, written or oral, or other form of occupancy agreement,
10 any person with rights described in section ninety-one of this article
11 shall have the right to continue in occupancy, and the court may so
12 order, for a term equivalent to the balance of the original term and
13 under the same terms and conditions as provided in the original lease or
14 occupancy agreement.

15 § 97. Remedies. Any person or entity aggrieved by a violation of the
16 protections created by this article shall have the right to bring an
17 action or special proceeding in a court of appropriate jurisdiction to
18 seek damages and/or declaratory and injunctive relief or any other reme-
19 dies as provided by law with respect to such violation. A prevailing
20 plaintiff may be entitled to an award of costs and attorney's fees.

21 § 98. Availability of remedies. Seeking legal remedies or relief
22 under this article shall not diminish or impair the right of a person to
23 seek or receive any other relief, remedy or benefit under any other
24 applicable law or legal process.

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