

STATE OF NEW YORK

4657--A

2019-2020 Regular Sessions

IN SENATE

March 19, 2019

Introduced by Sens. HOYLMAN, THOMAS, SERRANO -- read twice and ordered printed, and when printed to be committed 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.

97. Remedies.

98. Availability of remedies.

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

LBD04580-03-9

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

14 Municipalities throughout the state have increasingly begun to adopt
15 local laws and ordinances to address public nuisances or other intru-
16 sions on the quiet enjoyment of their residents and communities. Despite
17 their intent to aid communities, overly broad ordinances have instead
18 had a harmful chilling effect deterring victims of violence and crime
19 from accessing police assistance and have jeopardized public safety.
20 They also can unfairly penalize landlords when their tenants need emer-
21 gency assistance. Courts in New York and other states have found such
22 public ordinances to be unconstitutional because of these harms. More-
23 over, the U.S. Department of Housing and Urban Development issued guid-
24 ance in 2016 on how these ordinances can violate the Fair Housing Act's
25 prohibitions on discrimination based on sex, race, disability, and
26 national origin.

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

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

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

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

43 The legislature finally finds that there is a need to assure that
44 people who need emergency assistance, including persons with disabili-
45 ties, have a clear right to access assistance without fear of penalty or
46 reprisal.

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

52 § 91. Right to call for police and emergency assistance; victim
53 protections. 1. Any person who is a victim of domestic violence, as
54 defined in section four hundred fifty-nine-a of the social services law,
55 or who otherwise believes they are in need of police or emergency
56 assistance has the right to request such assistance and to be free of

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

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

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

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

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

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

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

1 proceedings law in order to advance the defenses provided by this arti-
2 cle.

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

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

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

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