

# 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:

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. 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.