STATE OF NEW YORK

6678--C

2021-2022 Regular Sessions

IN SENATE

May 11, 2021

Introduced by Sens. MAY, BAILEY, BIAGGI, BRISPORT, BROUK, CLEARE, COMRIE, COONEY, GIANARIS, GOUNARDES, HARCKHAM, HINCHEY, HOYLMAN, JACKSON, KENNEDY, LIU, MANNION, MAYER, MYRIE, RAMOS, REICHLIN-MELNICK, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, SKOUFIS, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Housing, Construction and Community Development in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the executive law, the real property actions and proceedings law and the real property law, in relation to establishing the New York state office of civil representation to provide access to legal services in eviction proceedings

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

Section 1. Legislative findings. Eviction proceedings have a profoundly disparate impact on low-income individuals and given this disparate impact, it is imperative that these individuals be provided legal representation in legal proceedings that put their housing at risk. Additionally, because eviction proceedings can be complex, all New Yorkers should be apprised of the process as well as their rights and remedies in such proceedings.

There is a fundamental human right to adequate housing accommodations. Safe, secure, and accessible housing is essential to achieving equal access to all other fundamental needs. Without housing, individuals and families too often cannot preserve family integrity, gain employment or

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

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other income, or enjoy access to healthcare, proper nutrition, and education.

Eviction proceedings and displacement as a result of evictions have a disparate impact on low-income individuals and particularly on low-income people of color, who are disproportionately the respondents in eviction proceedings.

Representation of the people who are most at risk of losing their homes in legal proceedings preserves access to housing and ensures compliance with laws protecting people's rights in such proceedings. Abrupt, unwarranted, or unlawful evictions disrupt lives and livelihoods, force people to find housing in a market with a severe shortage of affordable housing and often significantly increases the risk of homelessness. The short- and long-term effects of housing instability are devastating to individuals and families and can affect physical and mental health, employment and education. Providing legal assistance to individuals who are most at risk of housing instability not only protects individuals and families from these devastating effects, it saves public funds that would otherwise be spent on shelters and services to people experiencing homelessness as well as the wide range of detrimental short- and long-term collateral consequences of housing instability.

§ 2. The executive law is amended by adding a new article 29 to read as follows:

ARTICLE 29

NEW YORK STATE OFFICE OF CIVIL REPRESENTATION

Section 827. Office of civil representation.
828. Powers and duties of the office of civil representation.
829. Definitions.
830. Provision of legal representation, legal consultation, and community education.

§ 827. Office of civil representation. 1. There is hereby established in the executive department an office of civil representation to create and implement a program to provide access to legal services pursuant to section eight hundred twenty-eight of this article.

2. The office shall be headed by an executive director who shall be appointed by the governor with the advice and consent of the senate.

§ 828. Powers and duties of the office of civil representation. The executive director shall have the power and duty to:

1. establish a program to provide legal representation and legal consultation including entering into contracts and agreements as may be necessary, in accordance with section eight hundred thirty of this article;

2. prepare and submit to the governor, the temporary president of the senate, and the speaker of the assembly an annual report regarding the program created under section eight hundred thirty of this article. Such report shall include but not be limited to the following information, disaggregated by county, provided, however, that the information shall not be required for every case where the individual refuses to provide the information or the information is not reasonably ascertainable:

(a) the total number of people provided legal representation and legal consultation;

(b) the outcomes of the cases provided legal representation and, to the extent known, the outcomes of the cases provided legal consultation;

(c) gender, race, ethnicity, and age;

(d) postal code of residence;

(e) household size;
(f) estimated length of tenancy;
(g) approximate household income;
(h) receipt of ongoing public assistance at the time such legal services were initiated;
(i) tenancy in rent-regulated housing;
(j) tenancy in housing operated by or subsidized through a federal, state or local rental subsidy program;
(k) legal services provided by type of legal issue;
(l) a list of designated legal organizations, the geographic region in which such organizations provide services, and the amount of funding provided to each;
(m) outcomes immediately following the provision of full legal representation, as applicable and available, including, but not limited to, the number of:
(i) judgments allowing individuals to remain in their residence;
(ii) judgments requiring individuals to be displaced from their residence; and
(iii) instances where an attorney representing an income-eligible individual was discharged or withdrew;
(n) a list of landlords involved in eviction proceedings;
(o) residential evictions conducted by sheriffs or city marshals, disaggregated by county;
(p) a list of designated community organizations, the geographic region in which such organizations provide services, and the amount of funding provided to each;
(q) the number of buildings in which outreach was conducted, the number of workshops offered, the number of attendees at such workshops, the number of people referred to non-profits having status under section 501 (C) (3) of the United States internal revenue code, and the number of trainings offered; and
(r) an evaluation of implementation challenges and recommendations for any future programmatic improvements.
3. provide an annual estimate for the funding necessary for the operation of the program under section eight hundred thirty of this article;
4. coordinate with other programs providing legal representation in covered proceedings to ensure efficiency of functions and to prevent duplication of work;
5. subject to available funding, create a program providing outreach and education through designated legal organizations, or other community organizations, to spread awareness of the availability of legal representation and legal consultation by such designated legal organizations;
6. create and make available resources for individuals with regard to their rights in civil legal matters regarding housing accommodations in the languages required by law and such additional languages as may be necessary; and
7. promulgates any rules, regulations, and guidance necessary for the implementation of the provisions of this article.
§ 829. Definitions. For the purposes of this article, the following terms shall have the following meanings:
1. "executive director" means the executive director of the New York state office of civil representation.
2. "office" means the New York state office of civil representation.
3. "eligible individual" means an individual who is at risk of losing their housing accommodation in a covered proceeding and who has an income at or below eighty percent of the area median income and, where

applicable, does not otherwise qualify for legal representation under any other program providing individuals legal representation operated or funded by a municipality, as well as any other individual meeting criteria developed by the office, which may include but not be limited to individuals eligible for a stay on the issuance of a warrant of eviction under section seven hundred fifty-three of the real property actions and proceedings law.

4. "covered proceeding" means any proceeding to evict an individual or otherwise terminate a tenancy, any other proceeding that is likely to result in an individual losing such individual's housing accommodation, as determined by the office, or a proceeding brought by an eligible individual to enforce the warranty of habitability or in response to the unlawful actions of a landlord, as well as any appeals from any such proceedings.

5. "designated legal organization" means a not-for-profit organization or association having non-profit status under section 501(C)(3) of the United States internal revenue code that has the capacity to provide comprehensive and effective legal services for the program established under section eight hundred thirty of this article. To the extent practicable, such designated legal organizations shall be organizations that maintain a practice of furnishing free or reduced cost legal services to individuals; possess expertise in the areas of law for covered proceedings; have a demonstrated history or practice with regard to the legal issues facing low-income residents of the state of New York; possess adequate infrastructure to provide consistent legal representation and/or legal consultation.

6. "designated community organization" means a not-for-profit organization or association having non-profit status under section 501(C)(3) of the United States internal revenue code that has the capacity to provide education in a program established under section eight hundred thirty of this article. To the extent practicable, such designated community organization shall maintain a practice of furnishing free services; possess expertise and experience in community education and organizing, and ties to the communities they serve; demonstrate expertise in recognizing and responding to the housing issues facing low-income residents of the state of New York; possess adequate expertise to provide consistent, high quality supervision, oversight, training, evaluation, and strategic response to emerging or changing needs in the communities served; and maintain reasonable workloads and working conditions for their staff.

7. "legal representation" means ongoing legal representation provided by a designated legal organization to eligible individuals and the provision of legal advice, advocacy, and assistance, including but not be limited to: filing a notice of appearance, filing and preparation of pleadings and motions on behalf of eligible individuals, court appearances on behalf of eligible individuals, pre- and post-trial settlement conferences, and any other activities needed to provide legal representation in a covered proceeding.

8. "legal consultation" means the provision of legal advice, including advising an individual, who is not otherwise an eligible individual under this section, of the applicable laws and remedies pertaining to the covered proceeding in which they are involved, provided by a designated legal organization to an individual who is not otherwise an eligible individual.

9. "housing accommodation" means that part of any building or structure or any part thereof, permanent or temporary, occupied or intended,

arranged or designed to be used or occupied, by one or more individuals as a residence, home, dwelling unit or apartment, sleeping place, boarding house, lodging house or hotel, and all essential services, privileges, furnishings, furniture and facilities supplied in connection with the occupation thereof.

§ 830. Provision of legal representation, legal consultation, and community education. 1. Subject to available funding and in accordance with this article, the office shall develop programs to provide:

(a) legal representation through one or more designated legal organizations to eligible individuals in covered proceedings throughout the state;

(b) legal consultation through one or more designated legal organizations to individuals not eligible for legal representation under this article and not otherwise eligible for legal consultation under any program operated or funded by a municipality; and

(c) community outreach and education through one or more designated legal organizations and/or designated community organizations regarding the programs created herein.

2. In creating the programs under subdivision one of this section, the executive director shall consult with the following:

(a) tenants and/or representatives of tenants, and community groups representing low-income or other at-risk members of the community;

(b) legal and community-based organizations;

(c) representatives of the judiciary;

(d) representatives of a municipality operating or funding a program providing legal representation, legal consultation, or community education and outreach and/or representatives of the organizations involved in such programs; and

(e) any other organizations or individuals as may be necessary as determined by the executive director.

3. The office shall post on its website information regarding the programs created under this section including how individuals may find services available in their geographic area.

4. The office shall hold one or more hearings or listening sessions in each region of the state on an annual basis to evaluate the programs created pursuant to this section and to incorporate any necessary changes to such programs.

§ 3. Section 701 of the real property actions and proceedings law is amended by adding a new subdivision 3 to read as follows:

3. Any court maintaining a covered proceeding, as defined by section eight hundred twenty-nine of the executive law, shall notify all respondents by mail upon filing of a petition, not less than fourteen days before trial, of the ability to obtain legal representation or legal consultation, as applicable, pursuant to section eight hundred thirty of the executive law.

§ 4. Subdivisions 1 and 2 of section 711 of the real property actions and proceedings law, subdivision 1 as amended by chapter 305 of the laws of 1963 and subdivision 2 as amended by section 12 of part M of chapter 36 of the laws of 2019, are amended to read as follows:

1. The tenant continues in possession of any portion of the premises after the expiration of his term, without the permission of the landlord or, in a case where a new lessee is entitled to possession, without the permission of the new lessee. Acceptance of rent after commencement of the special proceeding upon this ground shall not terminate such proceeding nor effect any award of possession to the landlord or to the new lessee, as the case may be. A proceeding seeking to recover

possession of real property by reason of the termination of the term fixed in the lease pursuant to a provision contained therein giving the landlord the right to terminate the time fixed for occupancy under such agreement if he deem the tenant objectionable, shall not be maintainable unless the landlord shall by competent evidence establish to the satisfaction of the court that the tenant is objectionable. **No proceeding shall be maintained unless the court has notified an individual of the ability to obtain legal representation or legal consultation, as applicable, pursuant to section eight hundred thirty of the executive law.**

2. The tenant has defaulted in the payment of rent, pursuant to the agreement under which the premises are held, and a written demand of the rent has been made with at least fourteen days' notice requiring, in the alternative, the payment of the rent, or the possession of the premises, has been served upon him as prescribed in section seven hundred thirty-five of this article. **No proceeding shall be maintained unless the court has notified an individual of the ability to obtain legal representation or legal consultation, as applicable, pursuant to section eight hundred thirty of the executive law.** Any person succeeding to the landlord's interest in the premises may proceed under this subdivision for rent due his predecessor in interest if he has a right thereto. Where a tenant dies during the term of the lease and rent due has not been paid and the apartment is occupied by a person with a claim to possession, a proceeding may be commenced naming the occupants of the apartment seeking a possessory judgment only as against the estate. Entry of such a judgment shall be without prejudice to the possessory claims of the occupants, and any warrant issued shall not be effective as against the occupants.

§ 5. Section 713 of the real property actions and proceedings law is amended by adding a new subdivision 12 to read as follows:

12. No proceeding shall be maintained, unless the court has provided the respondent with written notice of the ability of the respondent to obtain legal representation or legal consultation, as applicable, pursuant to section eight hundred thirty of the executive law.

§ 6. Section 745 of the real property actions and proceedings law is amended by adding a new subdivision 3 to read as follows:

3. Where a respondent who is an eligible individual, as defined in subdivision three of section eight hundred twenty-nine of the executive law, appears in court without counsel, the court shall notify such respondent orally of the ability to obtain legal representation pursuant to section eight hundred thirty of the executive law, and if such respondent would like counsel, the court shall adjourn the trial and provide sufficient time, not less than fourteen days, for such respondent to retain and consult counsel and shall grant such further adjournments as the court deems necessary for such covered individual to obtain counsel.

§ 7. Subdivisions 1 and 3 of section 749 of the real property actions and proceedings law, as amended by section 19 of part M of chapter 36 of the laws of 2019, are amended to read as follows:

1. Upon rendering a final judgment for petitioner, the court shall issue a warrant directed to the sheriff of the county or to any constable or marshal of the city in which the property, or a portion thereof, is situated, or, if it is not situated in a city, to any constable of any town in the county, describing the property, stating the earliest date upon which execution may occur pursuant to the order of the court, and commanding the officer to remove all persons named in the proceeding, provided upon a showing of good cause, the court may issue a stay of re-letting or renovation of the premises for a reasonable period of

time. **However, no court shall issue a judgment authorizing the issuance of a warrant of eviction against a respondent who has defaulted, or authorize the execution of an eviction pursuant to a default judgment, unless the court has provided the respondent with written notice of the respondent's ability to obtain legal representation or legal consultation, as applicable, pursuant to section eight hundred thirty of the executive law in eviction proceedings in the notice required by sections seven hundred eleven, seven hundred forty-one and seven hundred forty-five of this article.**

3. Nothing contained herein shall deprive the court of the power to stay or vacate such warrant for good cause shown prior to the execution thereof, or to restore the tenant to possession subsequent to execution of the warrant. **The failure of the court to advise an individual of their ability to obtain legal representation or legal consultation, as applicable, pursuant to section eight hundred thirty of the executive law in an eviction proceeding shall constitute good cause to stay or vacate such warrant.** In a judgment for non-payment of rent, the court shall vacate a warrant upon tender or deposit with the court of the full rent due at any time prior to its execution, unless the petitioner establishes that the tenant withheld the rent due in bad faith. Petitioner may recover by action any sum of money which was payable at the time when the special proceeding was commenced and the reasonable value of the use and occupation to the time when the warrant was issued, for any period of time with respect to which the agreement does not make any provision for payment of rent.

§ 8. The real property law is amended by adding a new section 235-j to read as follows:

§ 235-j. Lease provisions waiving right to counsel void. Any provision of a lease or contract waiving or otherwise limiting the tenant's ability to obtain legal representation or legal consultation under section eight hundred thirty of the executive law, as may be applicable, shall be void and unenforceable.

§ 9. Severability clause. If any provision of this act, or any application of any provision of this act, is held to be invalid, or to violate or be inconsistent with any federal law or regulation, that shall not affect the validity or effectiveness of any other provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 10. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that sections three through eight of this act shall take effect three years after such date.