STATE OF NEW YORK

6678

2021-2022 Regular Sessions

IN SENATE

May 11, 2021

Introduced by Sen. MAY -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the real property actions and proceedings law and the real property law, in relation to establishing the civil right to counsel in eviction proceedings

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

Section 1. Legislative findings. The legislature hereby finds that 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 other income, or enjoy access to healthcare, proper nutrition, and education.

Legal proceedings that can lead to eviction are generally complex and are governed by a large body of procedural and substantive law that makes these proceedings extremely difficult to navigate without the assistance of counsel. The overwhelming majority of landlords who seek to evict tenants are represented by legal counsel, while in the areas of New York State where there is no right to counsel most tenants are not represented by counsel. Eviction proceedings, displacement as a result of eviction proceedings, and executed evictions all have a disparate impact on people of color, who are respondents in eviction proceedings in numbers that greatly exceed their proportion of the general New York population. Representation of persons who face losing their homes in legal proceedings makes a determinative difference in outcome by preserving homes and ensuring compliance with laws that, among other purposes, protect the right to safe and secure living conditions, prohibit discrimination, regulate rents and provide rental subsidies. Representation of persons who face losing their homes in legal

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

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proceedings is essential to the fair functioning of the justice system and protects the rights to due process and equal protection of the law.

Evictions disrupt lives and livelihoods, force tenants to seek alternative housing in a market with a severe shortage of affordable housing and significantly increase the risk of homelessness. The short- and long-term effects of evictions and homelessness are devastating to individuals and families and can affect physical and mental health, employment, education, and engagement with the criminal justice system. Providing legal assistance to tenants who face eviction not only protects individuals and families from the devastating effects of eviction and homelessness, it saves public funds that would otherwise be spent on shelters and services to people experiencing homelessness as well as public expenses for addressing the wide range of detrimental short- and long-term effects of eviction and homelessness.

New York is facing an eviction crisis of unfathomable proportions due to the COVID-19 pandemic. According to an analysis of July 15th Census Bureau data, almost half (46 percent) of all renting households in the state were not able to pay rent and are at risk of eviction. In 2017, New York City adopted legislation that guarantees a right to counsel for tenants facing eviction. Even though the right to counsel in eviction proceedings in New York City is still in the implementation phase, a study conducted by the New York City Office of Civil Justice that analyzed data pertaining to New York City Housing Court proceedings from 2013-2019 found that legal representation in eviction matters has an enormously beneficial effect as shown by the following data:

1. Evictions dropped 41 percent overall since 2013, including a 15 percent drop in 2019 alone;

2. Eviction filings dropped by 30 percent between 2013 and 2019, including a 20 percent drop in 2019 alone;

3. Default judgments dropped 34 percent between 2013 and 2019;

4. Requests by tenants to bring their cases back to the Housing Court calendar on an emergency basis dropped by 38 percent during that time period, because tenant representation is ensuring these issues are addressed at the start of the case; and

5. Overall, 84 percent of tenants who were represented by counsel remained in their homes.

§ 2. The real property actions and proceedings law is amended by adding a new article 7-C to read as follows:

ARTICLE 7-C
CIVIL RIGHT TO COUNSEL
IN EVICTION PROCEEDINGS ACT

Section 800. Short title.
800-a. Legislative purpose.
800-b. Construction; effect of other laws; severability.
800-c. Definitions.
800-d. Civil right to counsel in eviction proceedings created.
800-e. New York state office of civil justice established.
800-f. Provision of legal services.
800-g. Community engagement.
800-h. Public hearings.
800-i. Reporting.

§ 800. Short title. This article shall be known and may be cited as the "civil right to counsel in eviction proceedings act".

§ 800-a. Legislative purpose. The purpose of this article is to create a civil right to counsel in eviction proceedings in New York state that guarantees all covered individuals are provided high quality legal representation at government expense in all covered proceedings. The civil right to counsel for people who face eviction is intended to ensure fair and balanced proceedings that comport with the constitutional rights to due process and equal protection and, given the devastating consequences of eviction, outweigh all other considerations in the administration of legal proceedings that could result in eviction.

§ 800-b. Construction; effect of other laws; severability. 1. This article shall be interpreted broadly to effectuate the purposes described in section eight hundred-a of this article.

2. This article shall not be construed to negate, alter, or limit any right to counsel in any civil or criminal action or proceeding otherwise provided under the New York state constitution or any New York state statute. In the event of any conflict between the provisions of this article and any other provision of law, this article shall govern.

3. If any word, phrase, clause, sentence, paragraph, subdivision, section or part of this article or the application thereof to any person or circumstance shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall not affect or invalidate the remainder of this article, and shall be confined in its operation to the controversy in which it was rendered, and to the word, phrase, clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

§ 800-c. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. "Coordinator" means the civil justice coordinator appointed pursuant to section eight hundred-e of this article.

2. "Covered individual" means an individual who is a respondent in a covered proceeding.

3. "Covered proceeding" means any proceeding to evict a tenant, including a summary proceeding to seek possession for the non-payment of rent or a holdover, or any other proceeding for termination of tenancy, or any proceeding that could result in an individual losing such individual's housing accommodation. "Covered proceeding" shall include, but not be limited to proceedings:

(a) To evict a tenant;

(b) Initiated by a tenant to correct violations of law relating to hazardous housing standards;

(c) To terminate an eligible individual from participation in any New York state, locality, or federal housing subsidy program;

(d) Initiated by a tenant in response to unlawful landlord or owner behavior; and

(e) Any other proceeding commenced against or by an individual that a designated legal organization determines in its sole discretion can be reasonably anticipated to lead to loss of such individual's home or housing accommodation.

4. "Designated legal organization" means a not-for-profit organization or association having non-profit status under section 501 (c) (3) of the U.S. internal revenue code that has the capacity to provide comprehensive and effective legal services and is designated by the coordinator pursuant to this article.

5. "Designated community organization" means a not-for-profit organization or association having non-profit status under section 501 (c)

(3) of the U.S. internal revenue code that provide community education and organization regarding rights of tenants.

6. "Designated statewide languages" means languages designated by the coordinator pursuant to section eight hundred-e of this article.

7. "Full legal representation" means ongoing legal representation provided by a designated legal organization to a covered individual and includes all legal advice, advocacy, and assistance associated with such representation. "Full legal representation" shall include, but not be limited to: filing a notice of appearance, filing and preparation of pleadings and motions on behalf of covered individuals, court appearances on behalf of covered individuals, pre- and post-trial settlement conferences, and any other activities needed to provide representation in a covered proceeding.

8. "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.

9. "Office" means the New York state office of civil justice established pursuant to section eight hundred-e of this article.

§ 800-d. Civil right to counsel in eviction proceedings created. 1. The civil right to full representation by counsel in covered proceedings for covered individuals is hereby created and shall apply to all pending covered proceedings at the time of the effective date of this section, and to all covered proceedings initiated on or after the effective date of this section.

2. The civil right to counsel in covered proceedings shall apply to a covered individual upon the service of a predicate notice upon such individual, upon the commencement of a covered proceeding, or upon a determination by a designated legal organization that a covered proceeding is reasonably anticipated, whichever occurs earlier.

§ 800-e. New York state office of civil justice established. 1. There is hereby established the "New York state office of civil justice" to conduct planning and implementation of the purposes of this article.

2. The office shall be headed by a civil justice coordinator who shall be appointed by the governor. The civil justice coordinator shall have the power and duty to:

(a) create and implement a program to provide access to legal services pursuant to section eight hundred-f of this article;

(b) advise and assist the governor in planning and implementing coordination and cooperation among state agencies necessary for the implementation of this article;

(c) prepare and submit to the governor, the temporary president of the senate, and the speaker of the assembly an annual report of the need for designated legal organizations and designated community organizations in the state, and whether current designated legal organizations and designated community organizations are able to meet the needs of covered individuals;

(d) propose an amount of funding for designated legal organizations and designated community organizations that is sufficient to assist all covered individuals, and to enable such organizations to provide high quality assistance and have reasonable workloads, decent working conditions, and adequate compensation for their staff;

(e) serve as liaison for the state with designated legal organizations and designated community organizations;

(f) promulgate any rules and regulations necessary for the implementation of the provisions of this article;

(g) prepare a list of designated languages that shall consist of languages spoken by a large enough population of New York residents that preparation of materials and conduct of education and engagement by designated community organizations in such languages is appropriate;

(h) support outreach and education by designated community organizations, to spread awareness of the availability of designated legal organizations; and

(i) perform such other duties as the governor may assign.

§ 800-f. Provision of legal services. 1. The coordinator shall establish a program to provide access to legal services for covered individuals in covered proceedings and shall, no later than ninety days following the effective date of this article:

(a) Ensure that a system is in place to provide all covered individuals in the state with counsel for covered proceedings, and that any notice of petition for summary eviction proceedings commenced under article seven of this chapter provides notice to covered individuals of their right to counsel and how they may secure such counsel;

(b) Ensure that all covered individuals receive access to full legal representation as provided under subdivision two of section eight hundred-d of this article; and

(c) Identify at least one designated legal organization or consortium of designated legal organizations capable of providing legal services in covered proceedings in each region of the state. In identifying designated legal organizations, the coordinator shall only consider providers that have the capacity to provide high quality legal assistance and, at minimum, meet the following qualifications:

(i) have non-profit status under section 501 (c) (3) of the U.S. internal revenue code;

(ii) maintain a practice of furnishing free legal services to individuals who cannot afford the services of a licensed legal professional;

(iii) possess expertise in housing law, landlord-tenant law, or related experience in representing covered individuals in covered proceedings;

(iv) demonstrate expertise in recognizing and responding to the legal issues facing low-income residents of the state of New York;

(v) possess adequate infrastructure and expertise to provide consistent, high quality supervision, oversight, training, evaluation, and strategic responses to emerging or changing needs in the client communities served; and

(vi) with sufficient funding, have the capacity to maintain reasonable caseloads and working conditions for their attorneys, paralegals, and other staff.

2. The coordinator shall require each designated legal organization to identify the geographic areas for which such organization shall provide legal services. For each such geographic area, the coordinator shall maintain a list of designated legal service organizations.

3. In developing the program under subdivision one of this section, the coordinator shall consult with:

(a) Tenants, representatives for tenants, and community groups;

(b) Representatives of designated legal organizations and unions engaged in representing employees of designated legal organizations;

(c) Representatives of the New York state bar association, the New York city bar association, the network of bar leaders, and other local bar associations in New York state; and

(d) Representatives of the judiciary.

4. The coordinator shall estimate annually the expenditures required for each year of implementation of the program described in this section. The estimate of required expenditures shall be sufficient to enable designated legal organizations to provide high quality assistance and maintain the qualifications set forth in paragraph (c) of subdivision one of this section. Beginning January first, two thousand twenty-three, and no later than January first of each year thereafter, the coordinator shall publish a summary of any changes to such estimates for expenditures.

5. The coordinator shall annually review the performance of designated legal organizations.

§ 800-g. Community engagement. 1. The coordinator shall identify one or more designated community organizations capable of providing community education and organization. In identifying designated community organizations, the coordinator shall only consider organizations that have the capacity to provide high quality assistance and shall, at minimum, meet the following qualifications:

(a) have non-profit status under section 501 (c) (3) of the U.S. internal revenue code;

(b) maintain a practice of furnishing free services;

(c) possess expertise and experience in community education and organization, and ties to the communities they serve;

(d) demonstrate expertise in recognizing and responding to the housing issues facing low-income residents of the state of New York;

(e) 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

(f) maintain reasonable workloads and working conditions for their staff.

2. With the support of the coordinator and adequate funding, designated community organizations shall be responsible for engaging and educating tenants of their rights in eviction proceedings, including but not limited to: hosting trainings and other workshops for tenants; distributing written information to tenants; assisting tenants in forming and maintaining tenant associations; referring tenants to designated legal organizations; and other activities to engage, educate, or inform tenants of their rights in eviction proceedings. Engagement and education shall be provided in designated statewide languages.

§ 800-h. Public hearings. 1. Following the establishment of the program established pursuant to section eight hundred-f of this article, once each year the coordinator shall hold a public hearing for each judicial department to receive recommendations and feedback about such program.

2. Such hearing shall be open to the public, and the coordinator shall provide notice of such hearing, no less than thirty days before such hearing, by:

(a) posting in the designated statewide languages in the housing courts and other forums in which eviction proceedings are held;

(b) posting in the designated statewide languages in public offices of county social services/human resources departments; and

(c) publicizing through local media and to each designated legal organization, each designated community organization, local elected

officials, the supervising judges of the housing courts, other forums in which eviction proceedings are held, and community-based organizations.

3. At such hearings, written and oral testimony may be provided.

4. The coordinator shall cause a transcript of such hearings to be produced and shall post such transcript online no later than forty-five days after a hearing.

§ 800-i. Reporting. 1. The coordinator shall provide the governor, the temporary president of the senate, and the speaker of the assembly with an annual financial audit of the program's activities, prepared by a certified public accountant licensed in the state of New York and carried out in accordance with generally accepted auditing standards.

2. No later than January first, two thousand twenty-three and January first of every other year thereafter, the coordinator shall submit to the governor, the temporary president of the senate, and the speaker of the assembly, and post online, a review of the program established pursuant to section eight hundred-f of this article and information regarding such program's implementation, to the extent such information is available, including, but not limited to:

(a) The estimated number of covered individuals in the state;

(b) The number of covered individuals who have received legal services, disaggregated by the following characteristics of such individuals:

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

(ii) county and postal code of residence;

(iii) household size;

(iv) estimated length of tenancy;

(v) approximate household income;

(vi) receipt of ongoing public assistance at the time such legal services were initiated;

(vii) tenancy in rent-regulated housing; and

(viii) tenancy in housing operated by or subsidized through a federal, state or local rental subsidy program;

(c) Legal services provided by type of legal issue;

(d) A list of designated legal organizations, the geographic region in which such organizations provide services, and the amount of funding provided to each;

(e) 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 a covered individual was discharged or withdrew;

(f) A list of landlords involved in eviction proceedings;

(g) Residential evictions conducted by sheriffs or city marshals, disaggregated by county;

(h) A list of designated community organizations, the geographic region in which such organizations provide services, and the amount of funding provided to each;

(i) 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 U.S. internal revenue code, and the number of trainings offered; and

(j) An evaluation of implementation challenges and recommendations for any future programmatic improvements.

§ 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-c of this chapter, shall notify all respondents by mail upon filing of a petition, not less than fourteen days before trial, of such respondent's civil right to counsel in an eviction proceeding under article seven-C of this chapter.

§ 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, and no court shall accept for filing, any petition to recover possession of real property unless the petitioner or an agent of the petitioner has filed an affidavit attesting that the petitioner or the petitioner's agent has provided the respondent with written notice, in the notice of petition and any required predicate notice, of such respondent's right to counsel in eviction proceedings under article seven-C of this chapter.**

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, and no court shall accept filing for any petition for non-payment of rent unless the written demand for rent required by this section contains a notice of the respondent's civil right to counsel in eviction proceedings, as required by subdivision six of section seven hundred forty-one of this article.** 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, and no court shall accept for filing, any petition to recover possession of real property unless the

petitioner or an agent of the petitioner has filed an affidavit attesting that the petitioner or the petitioner's agent has provided the respondent with written notice, in the notice of petition and any required predicate notice, of such respondent's right to counsel in eviction proceedings under article seven-C of this chapter.

§ 6. Section 741 of the real property actions and proceedings law is amended by adding three new subdivisions 6, 7 and 8 to read as follows:

6. Notify the respondent of the existence of the civil right to counsel in eviction proceedings under article seven-C of this chapter, and shall provide a phone number, website address and other information to assist the respondent in securing counsel.

7. State the right to an adjournment of the proceedings until a covered individual, as defined in section eight hundred-c of this chapter, is able to retain and consult with counsel.

8. State that any and all predicate notices served upon the respondent included notice of the civil right to counsel in eviction proceedings under article seven-C of this chapter, and provided a phone number, website address and other information to assist the respondent in securing counsel.

§ 7. 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 a covered individual under article seven-C of this chapter appears in court without counsel, the court shall notify such respondent orally of the civil right to counsel in eviction proceedings established by article seven-C of this chapter, 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.

§ 8. 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 petitioner or an agent of the petitioner has filed an affidavit attesting that the petitioner or the petitioner's agent has provided the respondent with written notice of the respondent's civil right to counsel in eviction proceedings in the notice of petition and in any predicate notice as 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 or the petitioner to comply with the civil right to counsel in eviction proceedings pursuant to

article seven-C of this chapter shall constitute good cause to 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.

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

§ 235-i. Lease provisions waiving right to counsel void. Any provision of a lease or contract waiving or limiting the right to counsel in eviction proceedings under article seven-C of the real property actions and proceedings law shall be void.

§ 10. This act shall take effect immediately.