STATE OF NEW YORK

2721

2023-2024 Regular Sessions

IN SENATE

January 24, 2023

Introduced by Sens. MAY, BAILEY, BRISPORT, BROUK, CLEARE, COMRIE, COONEY, GIANARIS, GOUNARDES, HARCKHAM, HINCHEY, HOYLMAN-SIGAL, JACKSON, KENNEDY, LIU, MANNION, MAYER, MYRIE, RAMOS, 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

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 a 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. 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.

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.

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 people who are 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

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

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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 a right to counsel 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. Right to counsel in eviction proceedings.
828. Office of civil representation.
829. Powers and duties of the office of civil representation.
830. Definitions.
831. Provision of legal representation and community education.

§ 827. Right to counsel in eviction proceedings. The civil right to full representation by counsel in covered proceedings for eligible individuals is hereby created.

§ 828. 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 a right to counsel pursuant to section eight hundred twenty-nine 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.

§ 829. 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 including entering into contracts and agreements as may be necessary, in accordance with section eight hundred thirty-one of this article;

2. prepare and submit to the governor, the temporary president of the senate, and the speaker of the assembly 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; and an annual report regarding the program created under section eight hundred thirty-one 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 the total number of people not provided legal representation and the reasons why representation was not provided;

(b) the outcomes of the cases provided legal representation;

(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 and stipulated agreements allowing individuals to remain in their residence;

(ii) judgments and stipulated agreements 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-one 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. create a program providing outreach and education through designated community organizations, to spread awareness of the availability of legal representation by designated legal organizations. With the support of the executive director 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;

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.

§ 830. 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. An individual becomes eligible when that individual (a) becomes the subject of a predicate notice in a covered proceeding; or (b) is a party, or has standing to be a party, in a covered proceeding; or (c) has been determined by a designated legal organization to be a person reasonably anticipated to become a party in a covered proceeding, whichever occurs earlier.

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, including an administrative proceeding to terminate a housing subsidy and any additional proceeding as determined by the office, or a proceeding brought by an eligible individual to enforce the warranty of habitability, or in response to an unlawful eviction, 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; 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.

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-one 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. "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.

§ 831. Provision of legal representation and community education. 1. In accordance with this article, the office shall develop programs to guarantee and deliver:

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

(b) community outreach and education through one or more 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 thirty of the executive law, shall notify all respondents by mail upon filing of a petition, not less than fourteen days before trial, of the right to obtain legal representation pursuant to section eight hundred thirty-one of the executive law.

§ 4. The opening paragraph of section 711 of the real property actions and proceedings law, as amended by section 12 of part M of chapter 36 of the laws of 2019, is amended to read as follows:

A tenant shall include an occupant of one or more rooms in a rooming house or a resident, not including a transient occupant, of one or more rooms in a hotel who has been in possession for thirty consecutive days or longer. No tenant or lawful occupant of a dwelling or housing accommodation shall be removed from possession except in a special proceeding. No special proceeding shall be maintained under any provision of this section unless the court has notified an individual of the right to obtain legal representation pursuant to section eight hundred thirty-one of the executive law. A special proceeding may be maintained under this article upon the following grounds:

§ 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 under this section, unless the court has provided the respondent with written notice of the right of the respondent to obtain legal representation pursuant to section eight

hundred thirty-one of the executive law, in the manner prescribed in section seven hundred forty-five of this article. Any ten-day notice to quit served pursuant to this section shall provide notice of the respondent's right to obtain legal representation under section eight hundred thirty-one of the executive law.

§ 6. Section 713-a of the real property actions and proceedings law, as amended by chapter 628 of the laws of 1982, is amended to read as follows:

§ 713-a. Special proceeding for termination of adult home and residence for adults admission agreements. A special proceeding to terminate the admission agreement of a resident of an adult home or residence for adults and discharge a resident therefrom may be maintained in a court of competent jurisdiction pursuant to the provisions of section four hundred sixty-one-h of the social services law and nothing contained in such section shall be construed to create a relationship of landlord and tenant between the operator of an adult home or residence for adults and a resident thereof. No proceeding shall be maintained under this section, unless the court has provided the respondent with written notice of the right of the respondent to obtain legal representation pursuant to section eight hundred thirty-one of the executive law.

§ 7. Section 715 of the real property actions and proceedings law is amended by adding a new subdivision 6 to read as follows:

6. No proceeding shall be maintained under any provision of this section, unless the court has provided the respondent with written notice of the right of the respondent to obtain legal representation pursuant to section eight hundred thirty-one of the executive law.

§ 8. Section 731 of the real property actions and proceedings law is amended by adding a new subdivision 5 to read as follows:

5. No special proceeding prescribed by this article shall be maintained unless the notice of petition has provided the respondent with written notice of the right of the respondent to obtain legal representation pursuant to section eight hundred thirty-one of the executive law.

§ 9. 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 thirty of the executive law, appears in court without counsel, the court shall notify such respondent orally of their right to obtain legal representation pursuant to section eight hundred thirty-one of the executive law, and if such respondent would like counsel, the court shall adjourn the trial and provide sufficient time, not less than thirty days, for such respondent to retain and consult counsel and shall grant such further adjournments for not less than thirty days each as are necessary for such respondent to retain and consult counsel.

§ 10. 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 right to obtain legal representation pursuant to section eight hundred thirty-one 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 tenants of their right to obtain legal representation pursuant to section eight hundred thirty-one 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**~~] **The court may not order recovery by the petitioner of** 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**, in any proceeding pending appointment of legal representation pursuant to section eight hundred thirty-one of the executive law**.

§ 11. Subdivision 1 of section 746 of the real property actions and proceedings law, as amended by chapter 725 of the laws of 2021, is amended to read as follows:

1. In any proceeding under this article, if a stipulation is made, on the occasion of a court appearance in the proceeding, setting forth an agreement between the parties, other than a stipulation solely to adjourn or stay the proceeding, and either the petitioner or the respondent is not represented by counsel, the court shall fully describe the terms of the stipulation to that party on the record. **If the respondent is not represented by counsel and the respondent is an eligible individual, as defined in subdivision three of section eight hundred thirty of the executive law, the court shall notify such respondent orally of their right to obtain legal representation pursuant to section eight hundred thirty-one of the executive law, and if such respondent would like counsel, the court shall cease the allocution and adjourn the trial and provide sufficient time, not less than thirty days, for such respondent to retain and consult counsel and shall grant such further adjournments for not less than thirty days each as are necessary for such respondent to retain and consult counsel.**

§ 12. 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 right to obtain legal representation under section eight hundred thirty-one of the executive law shall be void and unenforceable.

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

§ 235-k. Lease provisions shall provide notice of the right to counsel. Any lease or contract for rental of residential property shall

provide notice of the tenant's right to legal representation under section eight hundred thirty-one of the executive law.

§ 14. 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.

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