



**NEW YORK  
CITY BAR**

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**REPORT ON LEGISLATION BY THE  
DOMESTIC VIOLENCE COMMITTEE**

**A.9056  
S.6924**

**M. of A. Lavine  
Sen. Robach**

AN ACT to amend the civil rights law, in relation to the right to call for police and emergency assistance and providing victim protections.

**THIS LEGISLATION IS APPROVED WITH RECOMMENDATIONS**

This report is respectfully submitted by the Domestic Violence Committee of the New York City Bar Association, an organization of more than 24,000 legal professionals dedicated to improving the administration of justice.

The City Bar supports efforts to strengthen protections for victims of domestic violence and other crimes by ensuring their right to access police or emergency assistance without fear that doing so may jeopardize their housing. A new bill, A.9056/S.6924, would amend New York's Civil Rights Law to provide victims of domestic violence and other crimes with the right to call and access police and emergency assistance and would provide landlords the right to be free from penalty for respecting the rights of victims who access such assistance. The legislation also provides other housing-related protections to victims of domestic violence. We support the intent of this bill, and urge the Legislature to consider further changes to ensure the spirit of the bill is carried out. The City Bar is grateful for this opportunity to share information and observations about the proposed law and its implications for victims of domestic violence, landlords, and municipalities.

**RATIONALE FOR THE LEGISLATION**

As described in Section 90 of the Bill, municipalities throughout the state have increasingly begun to adopt laws, ordinances, and policies which seek to reduce public nuisances by removing tenants and occupants who request police or emergency assistance a certain number of times or for certain specified crimes or conduct.<sup>1</sup> Although these laws and ordinances typically aim to enhance public safety and the quiet enjoyment of residents by removing occupants who are undesirable due to their involvement in crimes such as drug and weapons offenses, disorderly conduct, and property crimes, the statutes are often overly broad, applying

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<sup>1</sup> See Memorandum of Support of Empire Justice and the American Civil Liberties Union Women's Rights Project, *Don't Force Domestic Violence and Other Crime Victims to Choose Between Safety and Housing—Provide Protections from "Nuisance Ordinances"* (A. 9056 Lavine), dated Mar. 2014, at 1 ("ACLU/Empire Joint Memo. of Support"); see also, e.g., East Rochester, New York, Code of the Town/Village of East Rochester, §§ 144-13, 144-14; *Grape v. Town/Village of East Rochester*, No. 07 CV 6075 CJS (F) (W.D.N.Y. July 6, 2007).

regardless of whether the occupants being removed are themselves victims of violence, including domestic violence. The ultimate effect of these laws and ordinances is to deter victims of violence from seeking and receiving the emergency and police assistance that they need and deserve, out of fear of eviction from their homes.

Moreover, enforcement of these nuisance laws and ordinances can violate multiple Constitutional rights and other federal protections, infringing upon important individual rights and exposing municipalities and landlords to liability. Most alarmingly, these laws often violate individuals' First Amendment right to communicate with law enforcement agencies. Furthermore, these laws may undermine or directly violate the Fourteenth Amendment's protection from deprivation of property rights without due process of law, the federal Fair Housing Act's protection against housing discrimination on the basis of sex, and the federal Violence Against Women Act's protection of beneficiaries of subsidized housing.<sup>2</sup>

The purpose of the Bill is thus to protect the rights of victims of violence, including domestic violence, to seek and receive emergency aid without facing the serious penalty of eviction from their homes, as well as to protect municipalities and landlords from exposure to liability for violating Constitutional and federal rights in their attempts to comply with these nuisance laws and ordinances.

## **RELIEF AFFORDED BY THE BILL**

The Bill protects all victims of violence, including domestic violence, from double victimization, by guaranteeing their right to seek emergency aid without fear of being penalized by eviction from their homes under local nuisance laws and ordinances.<sup>3</sup>

Additionally, the Bill protects both municipalities and landlords from exposure to liability for violating Constitutional and federal rights in the course of enforcing local nuisance laws and ordinances. The Bill eliminates the conundrum currently facing municipalities and landlords who, by complying with these nuisance laws, risk violating the Constitutional and federal rights of those affected.

## **COMMENTS REGARDING FURTHER CHANGES**

The Bill as proposed, while an important step towards improving the safety and housing security of victims of domestic violence and other crimes, could be improved with respect to the right it creates for victims of domestic violence to "remain in occupancy" after the perpetrator of the violence or crime is evicted.<sup>4</sup>

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<sup>2</sup> See Memorandum of Support of Empire Justice and the American Civil Liberties Union Women's Rights Project, *The Impact of Nuisance Ordinances and the Need for Remedial Legislation in New York*, dated Jan. 2014, at 2-3 ("ACLU/Empire Memo on Nuisance Ordinances").

<sup>3</sup> See *id.* at 6.

<sup>4</sup> See A.9056/S.6924 § 96.

We support Section 96 insofar as it provides for removal of a perpetrator of violence through “actions including termination, eviction or refusal to renew a leasehold interest or termination of any other form of lawful occupancy through a judicial proceeding.” Removal of the perpetrator in these circumstances will enhance the safety not only of the victim and other occupants of the leasehold premises but also the safety of any other tenants or occupants of the property. Furthermore, this provision ensures that a landlord<sup>5</sup> may remove an individual whose violent or criminal behavior disrupts the premises or threatens harm to other persons on the property in accordance with existing legal channels for removal, including lease bifurcation.<sup>6</sup> This provision will therefore enhance safety and housing security for victims, while simultaneously protecting and advancing the interests of landlords in maintaining safe premises for all tenants and occupants.

We believe that the second provision of Section 96 could be improved by further revisions. Under this provision, “[n]otwithstanding the terms of an existing lease, written or oral, or other form of occupancy agreement, any person with rights described in section ninety-one,” *i.e.*, any person who is a victim of domestic violence or otherwise believes s/he is in need of police or emergency assistance,<sup>7</sup> “shall have the right to continue in occupancy, and the court may so order, for a term equivalent to the balance of the original term and under the same terms and conditions as provided in the original lease or occupancy agreement.”

We recognize the importance of ensuring that victims of domestic violence do not lose their housing if the perpetrator, who may be the sole leaseholder, is removed from the premises in accordance with this section. As other supporters of the Bill have convincingly argued, victims should not be forced to choose between safety and housing security,<sup>8</sup> and thus it is important that legislation addressing the ill effects of nuisance laws also addresses the housing security needs of victims after a perpetrator has been lawfully evicted. We are concerned, however, that Section 96 as currently written may have unintended consequences and believe that the provision could be improved through further clarification to better effect the protections it seeks to provide to victims.

First, we believe the statute could be improved by clarifying the individuals to whom it gives the right to “continue in occupancy.” This could be accomplished by amending Section 96 to extend the right to “any person with rights described in section ninety-one of this article who has the right to occupy the premises under section 235-f of the New York Real Property Law.”<sup>9</sup>

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<sup>5</sup> We observe that the Bill uses several variations of the term “landlord,” including “landlord,” “landlord or other property owner,” and “landlord or other owner of real property.” *Compare* Section 92 with Section 93 and Section 95(2). For the sake of brevity, in our analysis and discussion of the bill in this Report, we use “landlord” to describe both landlords and real property owners. We suggest that any revised version of the Bill use one term to refer to this group, *e.g.*, “landlord or other real property owner,” and our proposed revisions, *see infra*, reflect such a change.

<sup>6</sup> *See* ACLU/Empire Joint Memo of Support at 2 (explaining that Section 96 authorizes, *inter alia*, a landlord “to allow a victim to remain in occupancy but remove the perpetrator of violence through lease bifurcation”).

<sup>7</sup> *See* A.9056/S.6924 § 91)

<sup>8</sup> *See, e.g.*, ACLU/Empire Joint Memo of Support at 3.

<sup>9</sup> The provision would thus extend the right to “continue in occupancy” to, *inter alia*, tenants, occupants, or immediate family members of the tenant. *See* N.Y. Real Prop. L. § 235-f(1)(a) (“‘Tenant’ means a person occupying or entitled to occupy a residential rental premise who is either a party to the lease or rental agreement for

We think it is important that both individuals who are on the lease, *i.e.* tenants under New York law, and those who are not on the lease but are otherwise lawfully residing on the premises and have legal rights to do so under New York law, are ensured some measure of housing security after a perpetrator is evicted pursuant to Section 96, as we recognize the high risk of homelessness these individuals would likely face if left without some right to continued occupancy, at least for a limited time. In addition, such a provision would decrease the burden and expense upon municipalities of providing emergency or temporary housing to victims in these circumstances.

We believe there is a risk that Section 96 as written could be read to extend the right to remain in occupancy to *non-lawful* occupants, as the provision as currently written affords the “right to remain in occupancy” to “any person with rights described in section [91] of this Article,” *i.e.*, “*any person* who is a victim of domestic violence . . . or who otherwise believes he or she is in need of police or emergency assistance,” and does not require that person to be lawfully occupying the premises in order to enjoy the protections set forth in Section 91.<sup>10</sup> This result seems at odds with the intention of the Bill, generally, and Section 96, specifically—that is, to protect the safety and housing security of persons *lawfully* occupying the premises in question—and thus clarification of the persons entitled to the right described in Section 96 would further the purpose of the Bill.

Moreover, making clear that the right described in Section 96 applies to individuals with property rights under N.Y. Real Prop. L. § 235-f will harmonize the Bill with New York Real Property Law, ensuring that there is no conflict between the two statutory schemes.

Second, we believe that the provision of Section 96 endowing courts with what is apparently unilateral authority to order a change in a lease or rental agreement, and which appears to provide the landlord no opportunity to take part in the decision of whether a victim will be permitted to remain in occupancy, could also be improved by revisions. Although certain New York laws permit a court to order that a tenant be *released* from a lease,<sup>11</sup> we know of no (state or federal) law endowing a court with authority to *order a private landlord to accept* a tenant. Indeed, the New York courts’ strong preference for non-interference with private contracts is well-established and long-standing.<sup>12</sup> Moreover, N.Y. Real Prop. L. § 235-f(6) provides that “[n]o occupant nor occupant’s dependent child shall, without express written permission of the landlord, acquire any right to continued occupancy in the event that the tenant vacates the premises or acquire any other rights of tenancy,” and thus Section 96 as written

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such premises or is a statutory tenant pursuant to [New York law.]”); *id.* § 235-f(1)(b) (“‘Occupant’ means a person, other than a tenant or a member of a tenant’s immediate family, occupying a premises with the consent of the tenant or tenants.”); *id.* § 235-f(3) (“Any lease or rental agreement for residential premises entered into by one tenant shall be construed to permit occupancy by the tenant, immediate family of the tenant, one additional occupancy, and dependent children of the occupant provided that the tenant or the tenant spouse occupies the premises as his primary residence.”).

<sup>10</sup> See A.9056/S.6924 § 91 (emphasis added).

<sup>11</sup> See, e.g., N.Y. Real Prop. L. § 227-c (requiring court to permit lessee or tenant for whom an order of protection has been ordered to terminate a lease or rental agreement upon satisfaction of certain conditions).

<sup>12</sup> See *JMD Holding Corp. v. Cong. Fin. Corp.*, 4 N.Y.3d 373, 380 (2005).

appears to conflict with the Real Property Law. In light of the well-established principle of judicial non-interference with private contracting rights, and in order to harmonize the Bill with New York Real Property Law, we recommend amending Section 96 to make the right to remain in occupancy under the terms and conditions of the original lease agreement contingent upon the landlord's express written authorization.

We recognize, however, the important role courts play in protecting the rights of tenants or occupants—who are unlikely to be represented by counsel—particularly where such tenants or occupants generally have unequal bargaining power *vis-à-vis* landlords.<sup>13</sup> Thus, we support a provision that affords the court a role in the process described in Section 96. We suggest limiting that role to one of review and carefully circumscribed order-making, which we feel is more appropriate given the historical non-involvement of New York Courts in private contract making and the long-established precedent disfavoring court-created contracts between private parties.

### **Suggested Revisions**

In light of the concerns discussed above, and looking to similar provisions in the 2013 Violence Against Women Act for guidance,<sup>14</sup> we suggest amending Section 96 as follows:<sup>15</sup>

Actions including termination, eviction or refusal to renew a leasehold interest or termination of any other form of lawful occupancy through a judicial proceeding may be carried out against the perpetrator of such violence or harm. In the event that an action described in this section is carried out against the perpetrator of such violence or harm [Notwithstanding the terms of an existing lease, written or oral, or other form of occupancy agreement], any person with rights described in section ninety-one of this Article who has the right to occupy the premises under section 235-f of the New York Real Property Law shall have the right to continue in occupancy, subject to the express written permission of the landlord or other real property owner [and the court may so order], for a term equivalent to the balance of the original term and under the same terms and conditions as provided in the original lease or occupancy agreement. In the event the landlord or other real property owner denies express written consent, with notice to the landlord or other real property owner, a person with rights described under this section shall have the right to appear before a court to establish his or her ability to satisfy the terms and conditions of the original lease or occupancy agreement for the balance of the original

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<sup>13</sup> *E.g., Rental & Mgmt. Associates, Inc. v. Hartford Ins. Co.*, 588 N.Y.S.2d 982, 984 (Sup. Ct. N.Y. Cnty. 1992), *aff'd*, 614 N.Y.S.2d 513 (1st Dep't 1994) (“The fact is that as between landlord and tenant there is a vast disproportion of power that calls for especially vigilant protection of the frequently powerless tenant.”).

<sup>14</sup> *See* 42 U.S.C. § 1403e-11(b)(3)(B)(i)-(ii) (lease bifurcation and right to establish eligibility for housing); *see also* NATIONAL HOUSING LAW PROJECT, *VAWA 2013 Bulletin Article* (July 2013), at 4 (discussing the same).

<sup>15</sup> Suggested amended language is underlined and language to be removed is bracketed; all other language reflects the text of Section 96 as currently proposed.

term, and the landlord or other real property owner shall have the right to be heard at such appearance. In reviewing the ability of a person described in the preceding sentence to satisfy the terms and conditions of the original lease or occupancy agreement for the balance of the original term, the court shall consider all of the relevant circumstances, including the person's ability to pay the rental fee, creditworthiness, and any other factors the landlord or other real property owner regularly considers in deciding whether to let the property in question, as well as the landlord's or other real property owner's reasons for refusing express written permission. If a person described in the preceding sentence cannot establish ability to satisfy the terms and conditions of the original lease or occupancy agreement, the court shall issue an order that the person may continue in occupancy for a reasonable time, as determined by the court, but the time ordered shall not exceed ninety days from the date the court finds that the person fails to establish ability to satisfy the terms and conditions of the original lease or occupancy agreement.

— or —

1. Actions including termination, eviction or refusal to renew a leasehold interest or termination of any other form of lawful occupancy through a judicial proceeding may be carried out against the perpetrator of such violence or harm.

2. In the event that an action described in subsection one of this section is carried out against the perpetrator of such violence or harm [Notwithstanding the terms of an existing lease, written or oral, or other form of occupancy agreement], any person with rights described in section ninety-one of this Article who is a lawful tenant, as defined in section 235-f(1)(a) of the New York Real Property Law shall have the right to continue in occupancy[, and the court may so order,] for a term equivalent to the balance of the original term and under the same terms and conditions as provided in the original lease or occupancy agreement. The landlord or other real property owner may, and the court may order the landlord or other real property owner to, bifurcate a lease or occupancy agreement in order to evict, remove, or terminate occupancy rights of the perpetrator of violence or harm, without evicting, removing, or otherwise penalizing any person with rights described in section ninety-one of this Article who is a lawful tenant.

3. In the event that an action described in subsection one of this section is carried out against the perpetrator of such violence or harm, any person with rights described in section ninety-one of this Article who has the right to occupy the premises as a non-tenant lawful occupant under section 235-f(1)(b) of the New York Real Property Law shall have the right to continue in occupancy, subject to the express written permission of the landlord or

other real property owner, for a term equivalent to the balance of the original term and under the same terms and conditions as provided in the original lease or occupancy agreement. In the event the landlord or other real property owner denies express written consent, with notice to the landlord, a person with rights described under this section shall have the right to appear before a court to establish his or her ability to satisfy the terms and conditions of the original lease or occupancy agreement for the balance of the original term, and the landlord or other real property owner shall have the right to be heard at such appearance. In reviewing the ability of such a person to satisfy the terms and conditions of the original lease or occupancy agreement for the balance of the original term, the court shall consider all of the relevant circumstances, including the person's ability to pay the rental fee, creditworthiness, and any other factors the landlord regularly considers in deciding whether to let the property in question, as well as the landlord's or other real property owner's reasons for refusing express written permission. If such a person cannot establish the ability to satisfy the terms and conditions of the original lease or occupancy agreement, the court shall issue an order that the person may continue in occupancy for a reasonable time, as determined by the court, but the time ordered shall not exceed ninety days from the date the court finds that the person fails to establish ability to satisfy the terms and conditions of the original lease or occupancy agreement.

Finally, we are concerned that Section 96 as written and as proposed, *supra*, is in tension with Section 92 insofar as it appears to limit a landlord's ability to terminate, evict or refuse to renew the tenancy of a tenant who enjoys the right to continue in occupancy afforded under Section 96. Thus, in recognition of the importance of preserving the right of landlords to pursue lawful means of eviction, termination or refusal to renew a tenancy in accordance with existing lawful means for doing so, we suggest the following revision to Section 92:

The protections of this article, including but not limited to those described in Sections 93 and 96, shall not be deemed to prohibit a municipality from enforcing an ordinance or local law, nor restrict a landlord or other real property owner from terminating, evicting or refusing to renew a tenancy, when such action is premised upon (i) grounds other than (a) the eviction, removal, or termination of occupancy rights of a perpetrator of violence or harm or (b) access of police or emergency assistance, or [is otherwise premised on] (ii) conduct unrelated to the residential occupant's status as a target of the victim of violence or harm.

## CONCLUSION

A. 9056/S.6924 represents an important step forward in ensuring that victims of domestic violence are able to access crucial police and emergency assistance services without fear or risk of losing housing, which itself is critical to their safety and well-being. Importantly, the bill would protect the recognized and established First Amendment right of such victims to access

police and emergency services. The legislation would also ensure that landlords are not put in the untenable position of choosing between evicting a victim-occupant or facing financial, licensing, or other penalty that threatens their livelihood. Ultimately, the bill would enhance public safety by ensuring that victims of crime are not thwarted or discouraged from calling for emergency assistance when needed and help to ensure that crimes are reported to police and prosecuted to the fullest extent of the law.

For these reasons, the New York City Bar Association recommends enactment of this legislation, in accordance with the suggestions set forth in this Report.

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