



Legislation Text

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Int. No. 752-A

Introduced by the Speaker (Council Member Vallone) and Council Members Berman, Eisland, Spigner, Robles, Wooten, DiBrienza, Freed, Michels, O'Donovan, Povman, Foster, the Public Advocate (Mr. Green), Perkins, Carrion, Clarke, Dear, Eldridge, Malave-Dilan, Henry, Koslowitz, Linares, Nelson, Reed, Warden, Abel and Oddo; also Council Members Fisher, Harrison, Leffler, Marshall, McCaffrey, Miller, Provenzano, Quinn, Rivera, Robinson, Sabini and Cruz.

A Local Law to amend the administrative code of the city of New York to protect individuals who are the victims of gender-motivated violence.

Be it enacted by the Council as follows:

Section 1. A new Chapter 9 is hereby added to Title 8 of the Administrative Code of the City of New York to read as follows:

CHAPTER NINE

ACTIONS BY VICTIMS OF GENDER-MOTIVATED VIOLENCE

§ 8-901 **Short Title.** This local law shall be known as the “Victims of Gender-Motivated Violence Protection Act”.

§8-902 **Declaration of Legislative Findings and Intent.** Gender-motivated violence inflicts serious physical, psychological, emotional and economic harm on its victims. Congressional findings have documented that gender-motivated violence is widespread throughout the United States, representing the leading cause of injuries to women ages 15 to 44. Further statistics have shown that three out of four women will be the victim of a violent crime sometime during their lives, and as many as four million women a year are victims of

domestic violence. Senate hearings, various task forces and the United States Department of Justice have concluded that victims of gender-motivated violence frequently face a climate of condescension, indifference and hostility in the court system and have documented the legal system’s hostility towards sexual assault and domestic violence claims.

Recognizing this widespread problem, Congress in 1994 provided victims of gender- motivated violence with a cause of action in federal court through the Violence Against Women Act (VAWA) (42 USC § 13981). In a May 15, 2000 decision, the United States Supreme Court held that the Constitution provided no basis for a federal cause of action by victims of gender-motivated violence against their perpetrators either under the Commerce Clause or the Equal Protection Clause of the Fourteenth Amendment. In so ruling the Court held that it could “think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims.”

In light of the void left by the Supreme Court’s decision, this Council finds that victims of gender-motivated violence should have a private right of action against their perpetrators under the Administrative Code. This private right of action aims to resolve the difficulty that victims face in seeking court remedies by providing an officially sanctioned and legitimate cause of action for seeking redress for injuries resulting from gender-motivated violence.

§ 8-903 **Definitions.** For purposes of this chapter:

- a. “Crime of violence” means an act or series of acts that would constitute a misdemeanor or felony against the person as defined in state or federal law or that would constitute a misdemeanor or felony against property as defined in state or federal law if the conduct presents a serious risk of physical injury to another, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction.

b. “Crime of violence motivated by gender” means a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim’s gender.

§ 8-904 Civil Cause of Action. Except as otherwise provided by law, any person claiming to be injured by an individual who commits a crime of violence motivated by gender as defined in section 8-903 of this chapter, shall have a cause of action against such individual in any court of competent jurisdiction for any or all of the following relief:

1. compensatory and punitive damages;
2. injunctive and declaratory relief;
3. attorneys’ fees and costs;
4. such other relief as a court may deem appropriate.

§ 8-905 Limitations. a. A civil action under this chapter must be commenced within seven years after the alleged crime of violence motivated by gender as defined in section 8-903 of this chapter occurred. If, however, due to injury or disability resulting from an act or acts giving rise to a cause of action under this chapter, or due to infancy as defined in the civil procedure law and rules, a person entitled to commence an action under this chapter is unable to do so at the time such cause of action accrues, then the time within which the action must be commenced shall be extended to seven years after the inability to commence the action ceases.

b. Except as otherwise permitted by law, nothing in this chapter entitles a person to a cause of action for random acts of violence unrelated to gender or for acts that cannot be demonstrated, by preponderance of the evidence, to be motivated by gender as defined in Section 8-903.

c. Nothing in this section requires a prior criminal complaint, prosecution or conviction to establish the elements of a cause of action under this chapter.

§ 8-906 **Burden of Proof.** Conviction of a crime arising out of the same transaction, occurrence or event giving rise to a cause of action under this chapter shall be considered conclusive proof of the underlying facts of that crime for purposes of an action brought under this chapter. That such crime was a crime of violence motivated by gender must be proved by a preponderance of the evidence.

§8-907 **Severability.** If any section, subsection, sentence, clause, phrase or other portion of this local law is, for any reason, declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this law, which remaining portions shall continue in full force and effect.

§ 2. This local law shall take effect immediately after its enactment into law.