

NYC Council Fair Chance for Housing Act - Intro #2047:

Frequently Asked Questions

What is Intro 2047 and how will it impact housing providers?

This bill would prohibit housing discrimination in rentals, leases, subleases, or occupancy agreements in New York City, on the basis of arrest or conviction record. Landlords and real estate brokers would be prohibited from doing background checks or inquiring about arrest or conviction record information at any stage in the application process.

Are there any exceptions?

There are only two exceptions: (1) housing providers who must abide by any federal or state law or regulation that requires consideration of conviction record information for housing purposes, and (2) roommates — people who are renting a room (or rooms) while also residing in the same housing accommodation, or whose family members reside in the same housing accommodation.

What about the safety of other tenants and the safety of buildings?

Using conviction records is not actually a useful way to determine a person's trustworthiness or safety — and it only legitimizes and entrenches our problematic criminal legal system. From racist policing, to prosecutorial discretion in charging, to pressured plea bargaining, to laws that shield officers, to problematic evidentiary laws, there are documented problems throughout our criminal legal system. These structural inequities have unjust and disproportionate effects on Black communities — as a result, 1 in 3 Black men have a felony conviction, compared to 1 in 12 total Americans.ⁱ And an estimated 45% of all people in New York State have an arrest or conviction record.ⁱⁱ

Private background check and tenant screening businesses are largely unregulated and often purchase information from non-official sources. As a result, background checks are prone to errors and do little to show the safety of a prospective or current tenant.ⁱⁱⁱ In fact, a recent joint investigation by The Markup and The New York Times found that renter background checks can be wildly inaccurate — one lawsuit claims that a single background check company produced 11,000 inaccurate renter background reports between 2014 and 2019.^{iv} Thus, the Fair Chance for Housing Act will protect *all* applicants and housing providers from potentially misleading data.

Finally, the notion that denying people housing will increase safety is misguided. Ultimately, an inability to meet economic needs is a key driver of violence. When we eliminate barriers to housing, we improve neighborhood safety for everyone.^v

Does this include people convicted of sex offenses?

Yes. A number of studies indicate that people convicted of sex-related offenses have a very low likelihood of committing a new sex-related offense.^{vi} In fact, Bureau of Justice Statistics data show that people who served time for sex offenses had markedly lower recidivism rates than almost any other group.^{vii} Further, 95% of sex crimes are committed by people who don't have prior sex crime convictions.^{viii} And, only 6% of people under community supervision NYC and Long Island have sex offense convictions.

People with sex offense convictions are already under intense scrutiny and supervision by law enforcement — most are required to get approval for any residence and allow a parole officer to visit their residence. People on the sex offense registry also face residency restrictions — the law bars most from living within 1000 feet of of any school grounds. In New York City, where most residential property is within 1,000 feet of a school, the law effectively bars this subset of individuals from living in nearly all of Manhattan and the Bronx, as well as most of Brooklyn and Queens. The city's Sex Offender Monitoring Unit already performs residence verification and compliance monitoring. While residency restrictions seem to have intuitive appeal, research has shown that residency restrictions are not effective in preventing sex crimes.^{ix}

What is housing providers' liability if they rent to people with convictions?

No landlord has ever been held liable for the failure to perform a background check. Landlords are only expected to protect tenants from reasonably foreseeable harm. In a case arguing that a landlord should have investigated a tenant's history of psychiatric hospitalizations, the Court found that imposing such a burden would be offensive and unwarranted.^x Similarly, where a landlord knew about a tenant's prior threats of violence, the court declined to hold the landlord responsible for subsequent violent acts.^{xi}

The only case where liability was found was where a landlord failed to lock the door to a vacant apartment where criminal activity occurred.^{xii} However, the Court wrote that “[e]ven if a landlord has actual or constructive notice of a tenant's criminal history, ‘a landlord is under no duty to safeguard a tenant against attack by another tenant since it cannot be said that the landlord had the ability or a reasonable opportunity to control [the assailant].’”^{xiii} Courts in other cities have also explicitly held that landlords are not liable for failure to conduct a background check, because of the burdens such a duty would place on landlords and on society.^{xiv}

Does this remove landlord discretion in selecting a tenant?

No. Unlike Seattle and Portland's laws, this law does not have a “first in time” tenant provision. Landlords will still have the opportunity to judge all applicants on the merits of their individual applications.

What will this cost?

Landlords and other housing providers will likely save money on background checks, which can cost up to \$95 (from the New York State Office of Court Administration - New York Statewide criminal history record search) — the cost that can be passed on to tenants is now capped at \$20 for *both* a background and credit check by New York State Law.^{xv} Additionally, because quality housing of all types promotes stability, it reduces people's use of shelters and public systems and, thus, taxpayer costs.^{xvi}

What has happened in other cities with similar laws?

Many other cities have passed similar laws banning the use of some or all conviction records, including Seattle, WA, Richmond, CA, and Urbana, IL.^{xvii} Although these laws are relatively new, there is no evidence that the laws have led to an increase in crime or problems in buildings. In fact, research shows that formerly incarcerated people with access to stable housing are 20% less likely to commit a crime.^{xviii} In a pilot program in Ohio, giving supportive housing to people with disabilities upon reentry led to a 40% drop in recidivism.^{xix}

Why is ending record-based exclusions essential to Fair Housing?

Housing discrimination harms individuals, families, and entire communities. Housing discrimination not only limits housing choice, it also perpetuates residential segregation, thereby contributing to:

- “Social and economic inequalities by impeding access to educational, employment, and other opportunities;
- Homelessness, neighborhood disinvestment, and concentrated poverty;
- Disparities in homeownership and accumulation of personal wealth; and
- Stereotypes, fears, prejudices, and perceptions by consumers that certain housing or areas are not open or will not be welcoming.”^{xx}

Given the well-documented over-representation of people of color in our criminal legal system, denying people housing based on conviction records is often a proxy for denying people based on race. In fact, in 2016, the U.S. Department of Housing and Urban Development (HUD) issued guidelines that, given the racial disparities of the criminal legal system, housing policies that include a blanket ban on people with conviction records violate federal fair housing laws.^{xxi}

Why should we favor people with convictions?

This impacts so much more than people with convictions — it impacts whole families. Nearly half of all children in the United States—about 33 million to 36.5 million—have at least one parent with a criminal record.^{xxii} The collateral consequences of having a conviction record create barriers, restrict opportunities, and undermine the mobility and success for families across generations. Reducing barriers to housing so that people and families have stable homes can interrupt these intergenerational cycles of poverty and homelessness.^{xxiii}

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- ii “Fair Chance Licensing Reform: Opening Pathways for People with Records to Join Licensed Professions,” <https://www.nelp.org/publication/fair-chance-licensing-reform-opening-pathways-for-people-with-records-to-join-licensed-professions/>
- iii “Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses,” <https://www.nclc.org/images/pdf/pr-reports/broken-records-report.pdf>
- iv “When Zombie Data Costs You a Home,” <https://themarkup.org/locked-out/2020/10/06/zombie-criminal-records-housing-background-checks> & “Access Denied: Faulty Automated Background Checks Freeze Out Renters,” <https://themarkup.org/locked-out/2020/05/28/access-denied-faulty-automated-background-checks-freeze-out-renters>
- v “Accounting for Violence: How to Increase Safety and Break Our Failed Reliance on Mass Incarceration,” <https://www.vera.org/downloads/publications/accounting-for-violence.pdf>
- vi “Nowhere to Go: New York’s Housing Policy for Individuals on the Sex Offender Registry and Recommendations For Change,” <https://fortunesociety.org/wp-content/uploads/2019/05/NowhereToGo.pdf>
- vii “BJS fuels myths about sex offense recidivism, contradicting its own new data,” <https://www.prisonpolicy.org/blog/2019/06/06/sexoffenses/>
- viii “Does a watched pot boil? A time-series analysis of New York State’s sex offender registration and notification law,” doi:10.1037/a0013881
- ix “Sexual offender laws and prevention of sexual violence or recidivism,” doi: 10.2105/AJPH.2008.153254
- x Gill v. New York City Hous. Auth., 130 A.D.2d 256 (N.Y. App. Div. 1987)
- xi Blatt v. New York City Hous. Auth., 123 A.D.2d 591 (N.Y. App. Div. 1986).
- xii Gibbs v. Diamond, 256 A.D.2d 266, 266 (N.Y. App. Div. 1998).
- xiii Id., quoting Wright v. New York City Hous. Auth., 208 A.D.2d 327, 331 (1st Dep’t, 1995).
- xiv See Anderson v. 124 Green St. LLC, No. CIV.A. 09-2626-H, 2011 WL 341709 (Mass. Super. Jan. 18, 2011) – a Massachusetts court declined to hold a defendant landlord liable for failure to conduct a background check.
- xv Housing Stability And Tenant Protections Act of 2019, Section 238-a
- xvi “Impact of Affordable Housing on Families and Communities: A Review of the Evidence Base,” <https://www.enterprisecommunity.org/resources/impact-affordable-housing-families-and-communities-review-evidence-base-13210>
- xvii “Fair Chance Ordinances: An Advocate’s Toolkit,” https://www.nhlp.org/wp-content/uploads/021320_NHLP_FairChance_Final.pdf
- xviii “Reducing re-offending by ex-prisoners,” p. 94 https://www.prisonstudies.org/sites/default/files/resources/downloads/reducing_report20pdf.pdf
- xix “Supportive Housing for Returning Prisoners: Outcomes and Impacts of the Returning Home-Ohio Pilot Project,” <https://www.urban.org/sites/default/files/publication/25716/412632-Supportive-Housing-for-Returning-Prisoners-Outcomes-and-Impacts-of-the-Returning-Home-Ohio-Pilot-Project.PDF>
- xx “Fair Housing in New York,” <https://www.fairhousingjustice.org/about-us/fair-housing-new-york/>
- xxi “Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions,” https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF
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