



What is the Fair Chance for Housing Act?

The Fair Chance for Housing Act would prohibit housing discrimination on the basis of arrest or conviction record in NYC.

What would the Fair Chance for Housing Act do?

The Act would make it an unlawful discriminatory practice for housing providers to deny someone housing on the basis of an arrest or conviction record. The law would be enforced by the City Commission on Human Rights.

How many people will this impact?

New York City is in the midst of a housing and homelessness crisis, due in part to exclusionary policies that foreclose housing options based on conviction records. More people than ever must contend with the fallout of having a conviction record. In New York City, nearly 750,000 people have a conviction record — that's almost 11% of the adult population.¹

Discrimination impacts so many more than people with convictions — it impacts whole families. [79 percent of formerly incarcerated people and their families reported being denied housing due to a criminal conviction](#), in a survey covering 14 states including New York. 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.² 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.³

Who would the Act cover?

The Act would cover any person having the right to sell, rent, or lease or approve the sale, rental, or lease of a housing accommodation. There are some exemptions from the law:

- Housing providers would be allowed to check the New York State sex offense registry and deny housing to a person on the registry if they provide appropriate notice and an opportunity to dispute the record.
- 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.
- Apartments in a building that contains housing for not more than two families living independently of each other, if the building owner or members of the owner's family reside in one of the units.
- Any entity required to deny housing to people convicted of specific offenses or required to do a background check by state or federal law or regulation would also be exempt.

Why is this a racial justice issue?

Our mass policing, arrest, and incarceration policies have disproportionately targeted communities of color. These structural inequities have disproportionate effects on Black communities — as a result, **80% of New**

¹ <https://datacollaborativeforjustice.org/work/communities/criminal-conviction-records-in-new-york-city-1980-2019/>

² <https://www.americanprogress.org/issues/poverty/news/2020/04/15/483248/criminal-records-create-cycles-multigenerational-poverty/>

³ <https://www.fairhousingjustice.org/about-us/fair-housing-new-york/>

York City residents with a conviction are Black or Latinx.⁴

Criminal background checks have been used for far too long to perpetuate racial bias and exclude people from housing. We cannot end racial discrimination in housing if we don't end conviction record discrimination.

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.⁵

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.⁶

What about the safety of other tenants?

The notion that denying people with convictions housing increases safety is deeply misguided. Studies have shown that “obtaining permanent housing means that formerly incarcerated individuals are more likely to gain employment, maintain sobriety, complete parole supervision, and achieve the necessary stability to stay safely in the community.”⁷ Ultimately, an inability to meet economic needs is a key driver of violence. Stable housing is a necessary part of economic well-being. When we eliminate barriers to housing, we improve neighborhood safety for everyone.

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. The ability to have a stable life starts with having stable housing — and research shows that access to housing reduces recidivism.⁸ The Fair Chance for Housing Act will **end discrimination in housing, keep families together, and build strong communities.**

Why are background checks unreliable?

Private background check and tenant screening businesses are largely unregulated and often purchase information from non-official sources.⁹ As a result, background checks are prone to errors and do little to show the safety of a prospective or current tenant. 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

⁴ Ibid.

⁵ <https://www.fairhousingjustice.org/about-us/fair-housing-new-york/>

⁶ https://www.hud.gov/sites/documents/HUD_OGCGUJDAPPFHASTANDCR.PDF

⁷ <https://www.vera.org/news/homeward-bound-increasing-access-to-public-housing-in-new-york-for-formerly-incarcerated-people>

⁸ <https://www.vera.org/downloads/publications/accounting-for-violence.pdf>

⁹ <https://www.nclc.org/images/pdf/pr-reports/broken-records-report.pdf>

background check company produced 11,000 inaccurate renter background reports between 2014 and 2019.¹⁰ Thus, **the Fair Chance for Housing Act will protect all applicants and housing providers from potentially misleading data.**

Don't landlords have a right to know who they rent to?

The Fair Chance for Housing Act doesn't prohibit landlords from vetting tenants. Landlords can still interview applicants, call references, and ask for financial information. These are more reliable ways of investigating applicants than relying on often erroneous background checks that are the product of an unfair and racist justice system.

Are housing providers liable if they rent to people with convictions?

The bill specifically states that compliance with this law shall not constitute a basis for liability under other laws. Further, 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. A New York State 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].’”¹¹

How would it be enforced?

Like other Human Rights Law housing discrimination provisions, an aggrieved person could bring a complaint to the [New York City Commission on Human Rights](#) or a private right of action.

¹⁰ <https://themarkup.org/locked-out/2020/10/06/zombie-criminal-records-housing-background-checks>; <https://themarkup.org/locked-out/2020/05/28/access-denied-faulty-automated-background-checks-freeze-out-renters>

¹¹ Gibbs v. Diamond, 256 A.D.2d 266, 266 (N.Y. App. Div. 1998) quoting Wright v. New York City Hous. Auth., 208 A.D.2d 327, 331 (1st Dep’t, 1995).