

Committee on Civil and Human Rights
Jayasri Ganapathy, *Senior Legislative Counsel*
Wiam Diouri, *Senior Legislative Policy Analyst*
Tanveer Singh, *Finance Analyst*



THE COUNCIL OF THE CITY OF NEW YORK

**COMMITTEE REPORT AND BRIEFING PAPER
OF THE GOVERNMENTAL AFFAIRS DIVISION**

Andrea Vazquez, Legislative Director
Rachel Cordero, Deputy Director, Governmental Affairs

COMMITTEE ON CIVIL AND HUMAN RIGHTS

Hon. Nantasha Williams, Chair

December 8, 2022

Oversight: Fair Chance Housing

INTRODUCTION NO. 632:

By Council Members Powers, Rivera, Ayala, Williams, Sanchez, Hudson, Krishnan, Abreu, Brewer, Joseph, De La Rosa, Hanif, Restler, Gutiérrez, Riley, Bottcher, Won, Cabán, Feliz, Stevens, Marte, Avilés, Narcisse, Richardson Jordan, Ossé, Nurse, Fariás, Mealy, Barron, Louis (in conjunction with the Borough Presidents of Manhattan, Brooklyn, Bronx, and Queens), and Public Advocate Jumaane Williams

TITLE:

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting housing discrimination on the basis of arrest record or criminal history

I. INTRODUCTION

On December 8, 2022 the Committee on Civil and Human Rights, chaired by Council Member Nantasha Williams, will hold a hearing on Fair Chance Housing and Introduction No. 632 (Int. 632), sponsored by Council Member Keith Powers, in relation to prohibiting housing discrimination on the basis of arrest record or criminal history. Those invited to testify include representatives from the New York City Commission on Human Rights (CCHR), advocates, community organizations and members of the public.

II. BACKGROUND

a. Fair Chance Housing

As of this year, over 1.5 million people are incarcerated in federal or state prisons in the United States, four times the number since 1980.¹ Members of marginalized communities such as communities of color, LGBTQIA+, and those with histories of mental illness are disproportionately incarcerated.² Further, one in three people in the United States (U.S.) has a criminal record.³ In New York, 2.3 million people have a criminal record of some kind⁴ and approximately 750,000 New York City residents have a criminal conviction.⁵ Among the many ongoing challenges of having a criminal record, it often impedes the search for housing where

¹ *Americans with Criminal Records*. THE SENTENCING PROJECT. (Aug. 2022) Available at <https://www.sentencingproject.org/app/uploads/2022/08/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>

² *Americans with Criminal Records*. THE SENTENCING PROJECT. (Aug. 2022) Available at <https://www.sentencingproject.org/app/uploads/2022/08/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>

³ *Americans with Criminal Records*. THE SENTENCING PROJECT. (August 2022) Available at <https://www.sentencingproject.org/app/uploads/2022/08/Americans-with-Criminal-Records-Poverty-and-Opportunity-Profile.pdf>

⁴ *The Clean Slate Act Can Build a More Prosperous New York*. THE BRENNAN CENTER FOR JUSTICE. (Jan. 14, 2022) Available at <https://www.brennancenter.org/our-work/research-reports/clean-slate-act-can-build-more-prosperous-new-york#:~:text=More%20than%202.3%20million%20New,criminal%20record%20of%20some%20kind>

⁵ Zaveri, Mihir. *Criminal Background Checks May Be Banned in N.Y.C. Housing Applications*. NEW YORK TIMES. (Aug. 9, 2022) Available at <https://www.nytimes.com/2022/08/09/nyregion/criminal-background-checks-nyc-housing.html>.

criminal background checks are required as part of the tenant application process. Notably, formerly incarcerated people are ten times as likely to become homeless after release from jail or prison as those without a criminal record.⁶ A recent survey of formerly incarcerated people and their families found that 79 percent of participants were denied housing due to either their own or a loved one's criminal record.⁷ Another study found that in certain large urban areas, 30 to 50 percent of people on parole were homeless.⁸

The societal barriers to reintegration created by having a criminal background is a highly intersectional issue⁹. For example, while Black Americans make up about 13 percent of the U.S. population, they are incarcerated at a rate of 2,306 per every 100,000 people.¹⁰ Comparably, white people in the United States are incarcerated at a rate of 450 per every 100,000 people¹¹. As it stands, Black people make up 38 percent of the prison or jail population in the U.S., despite only making up 13 percent of the overall population in the country.¹² New York, in particular, has an incarceration rate of 443 per 100,000 people.¹³ While Black and Latinx people represent 16 percent and 18 percent of New York's population, respectively, they are incarcerated at a disproportionate

⁶ Jones, John. *It's Time to Ban the Box on Housing*. MEDIUM, TechEquity Collaborative. (Jan. 14, 2019) Available at <https://www.medium.com/techequity-collaborative/its-time-to-ban-the-box-on-housing-a20889159e69>.

⁷ Saneta deVuono-powell, Chris Schweidler, Alicia Walters, and Azadeh Zohrabi. *Who Pays? The True Cost of Incarceration on Families*. Oakland, CA: Ella Baker Center, Forward Together, Research Action Design. (2015) Available at <https://whopaysreport.org/wp-content/uploads/2015/09/Who-Pays-FINAL.pdf>.

⁸ Metraux, S., & Culhane, D. P. *Recent Incarceration History Among a Sheltered Homeless Population*. (2006) Available at https://repository.upenn.edu/spp_papers/61.

⁹ *Fair Chance Ordinances - An Advocate's Toolkit*. NATIONAL HOUSING LAW PROJECT. Available at https://www.nhlp.org/wp-content/uploads/021320_NHLP_FairChance_Final.pdf.

¹⁰ *Race and Ethnicity*. PRISON POLICY INITIATIVE. (Nov. 8, 2022) Available at: https://www.prisonpolicy.org/research/race_and_ethnicity/.

¹¹ *Race and Ethnicity*. PRISON POLICY INITIATIVE. (Nov. 8, 2022) Available at: https://www.prisonpolicy.org/research/race_and_ethnicity/.

¹² *Race and Ethnicity*. PRISON POLICY INITIATIVE. (Nov. 8, 2022) Available at: https://www.prisonpolicy.org/research/race_and_ethnicity/.

¹³ *New York Profile - Prison Policy Initiative*. PRISON POLICY INITIATIVE. Available at <https://www.prisonpolicy.org/profiles/NY.html>.

rate of 53 percent and 22 percent.¹⁴ Furthermore, socioeconomic background also appears to play a role in the rate of incarceration.

The lack of availability of housing for formerly incarcerated people is a barrier to reintegration and can perpetuate the cycle of criminality if not addressed. For example, a study by the Urban Institute found that 61 percent of formerly incarcerated individuals were less likely to be re-incarcerated if they received supportive housing.¹⁵ A study conducted by the Vera Institute with formerly incarcerated individuals living in New York City also found that those who were homeless after their first month out on parole were seven times more likely to abscond from their release terms.¹⁶

While some potential tenants may be eligible for having their criminal records sealed, it is not a guaranteed tool. In New York, over 600,000 people are eligible for record sealing but few succeed in completing the process, which is cumbersome and riddled with clerical errors that can leave aspects of a criminal history unsealed.¹⁷ One way to address these issues is through the enactment of state or local laws that prohibit consideration of criminal history. In 2015, the City Council passed the Fair Chance Act (Local Law 63 of 2015) to increase access to employment opportunities for those with criminal records. Advocates have called for similar legislation to address housing opportunities. In a similar vein, Int. 632 would prohibit landlords, real estate brokers or their agents from making any type of criminal history inquiry into an applicant's

¹⁴ *Id.*

¹⁵ Fontaine, Jocelyn. *Cityscape: A Journal of Policy Development and Research*, Vol. 15, Num. 3. U.S. Dept. of Housing and Urban Dev., Office of Policy Dev. and Research. (2013) Available at <https://www.huduser.gov/portal/periodicals/cityscape/vol15num3/ch3.pdf>.

¹⁶ Nelson, Marta, et al. THE FIRST MONTH OUT - POST-INCARCERATION EXPERIENCES IN NEW YORK CITY. VERA INSTITUTE. (Sept. 1999) Available at https://www.vera.org/downloads/Publications/the-first-month-out-post-incarceration-experiences-in-new-york-city/legacy_downloads/first_month_out.pdf.

¹⁷ Morrison, Aaron, et al. *Nearly 600,000 New Yorkers Are Eligible to Have Their Records Sealed. Fewer Than 1,800 of Them Have Succeeded.* THE APPEAL, (Oct. 8, 2019) Available at <https://www.theappeal.org/nearly-600000-new-yorkers-are-eligible-to-have-their-records-sealed-fewer-than-1800-of-them-have-succeeded/>.

background. As such, applicants in New York City would be entitled to protections already enjoyed in the employment context. San Francisco, Oakland, Detroit, the District of Columbia, Seattle, and Cook County, IL all have enacted such laws.¹⁸ At the state level, New Jersey enacted the Fair Chance in Housing Act, to improve access to housing and reduce recidivism and Colorado restricts owners from reviewing criminal convictions that are older than five years.¹⁹ While New York Governor Kathy Hochul has proposed restrictions on criminal background checks in housing, legislation to this effect has not been enacted by the state.²⁰

While there is some variation, these laws generally limit the amount of information that landlords can use when considering an applicant; for example, criminal history that is irrelevant to a tenancy, is significantly old or outdated, or relates to non-conviction offenses. Limiting the scope of what a landlord can consider would expand the pool of housing that is available to tenants.

III. BILL ANALYSIS

a. Int. 632-2022 - A Local Law to amend the administrative code of the city of New York, in relation to prohibiting housing discrimination on the basis of arrest record or criminal history.

This bill amends the City's Human Rights Law to prohibit housing discrimination in rentals, sales, leases, subleases or occupancy agreements in New York City, on the basis of arrest record or criminal history. Landlords, owners, agents, employees, and real estate brokers would

¹⁸ Office of Policy Development and Research. *Tenant Screening With Criminal Background Checks: Predictions And Perceptions Are Not Causality*. DEPT. OF HOUSING AND URBAN DEVELOPMENT. (May 17, 2022) Available at <https://www.huduser.gov/portal/pdredge/pdr-edge-firm-asst-sec-051722.html>; *Ban the Box and Beyond: How to Comply with State Laws and Local Ordinances*. RENT MANAGER, (Sept 25, 2019) <https://www.rentmanager.com/ban-the-box-and-beyond-how-to-comply-with-state-laws-and-local-ordinances/>.

¹⁹ *Fair Chance in Housing Act*. N.J.S.A. §§ 46:8-52 to 46:8-54. Available at https://www.njoag.gov/wp-content/uploads/2021/12/Fair-Chance-in-Housing-Act_NJSA-46-8-52-et-seq.pdf; *see also Klazema, Michael. Colorado Enacts New Restrictions on Tenant Background Checks*. BackgroundChecks.com. (May 9, 2019) Available at <https://www.backgroundchecks.com/blog/colorado-enacts-new-restrictions-on-tenant-background-checks>.

²⁰ Cavanaugh, Suzannah. *Hochul aims to stop landlords' knee-jerk rejections of ex-cons*. The Real Deal. (Jan. 11, 2022) Available at <https://therealdeal.com/2022/01/11/hochul-aims-to-stop-landlords-knee-jerk-rejections-of-ex-cons/>

be prohibited from obtaining criminal record information at any stage in the process. These entities would be able to take adverse actions against current occupants for reasons other than a person's arrest record or criminal history, as long as they are complying with laws protecting victims of domestic violence, sex offenses, or stalking. This law does not apply where federal, state, or local laws, rules or regulations require exclusion based on criminal history or require a criminal background check for eligibility. This bill also does not prohibit inquiries into the New York sex offender registry, but requires that the landlord, owner, agents and brokers provide the applicant written notice about the inquiry, and a reasonable amount of time, not more than three days, to withdraw the application. The bill also outlines a fair housing process for applicants to dispute an adverse action based on arrest record or criminal history. This bill does not apply to two-family owner-occupied housing or rooms in owner-occupied housing. Covered entities would not be liable under other laws for complying with this law.

[THIS PAGE IS LEFT INTENTIONALLY BLANK]

Int. No. 632

By Council Member Powers, the Public Advocate (Mr. Williams), Council Members Rivera, Ayala, Williams, Sanchez, Hudson, Krishnan, Abreu, Brewer, Joseph, De La Rosa, Hanif, Restler, Gutiérrez, Riley, Bottcher, Won, Cabán, Feliz, Stevens, Marte, Avilés, Narcisse, Richardson Jordan, Ossé, Nurse, Farías, Mealy, Barron, and Louis (in conjunction with the Manhattan Borough President, Brooklyn Borough President, Bronx Borough President and Queens Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting housing discrimination on the basis of arrest record or criminal history

Be it enacted by the Council as follows:

Section 1. Section 8-107 of title 8 of the administrative code of the city of New York is amended by adding a new subdivision 5-a to read as follows:

5-a. Protections based on arrest record and criminal history; housing. a. For purposes of this subdivision, the term “criminal history” includes records of an individual's

(1) Currently pending criminal cases;

(2) Convictions, including unsealed violations, or any conviction that resulted in a sentence involving fines, incarceration or other penalties arising from a verdict or plea of guilty or nolo contendere, a suspended sentence, a sentence of probation, or a sentence of unconditional discharge, and convictions that have been expunged, the subject of an executive pardon, the subject of a certificate of relief from disabilities, or otherwise legally nullified or vacated;

(3) Adjudications of juvenile delinquency or youthful offender adjudications; and

(4) Any records that have been sealed.

b. It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation, constructed or to be constructed, or an interest therein, or any agent or employee thereof, or any real estate broker or agent or employee thereof

to:

(1) Refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny to or withhold from any person such a housing accommodation or an interest therein because of such person's arrest record or criminal history;

(2) Discriminate against any person in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or an interest therein or in the furnishing of facilities or services in connection therewith, because of such person's arrest record or criminal history;

(3) Represent to any person that, because of such person's arrest record or criminal history, any housing accommodation or an interest therein is not available for inspection, sale, rental or lease when in fact it is available to such person;

(4) Declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such a housing accommodation or an interest therein which expresses, directly or indirectly, any limitation, specification or discrimination in housing based on a person's arrest record or criminal history; or

(5) Make any inquiry or statement related to arrest record or criminal history in connection with the prospective or continued purchase, rental, or lease of a housing accommodation. Prohibited inquiries include any question communicated to an individual in writing or otherwise, directly or indirectly, searches of publicly available records, criminal background checks, or any other conduct that gathers arrest record or criminal history information. If a covered entity uses consumer credit reports to screen applicants, it shall not take any adverse action based on arrest record or criminal history information contained in such report.

c. Nothing in paragraph b shall restrict a covered entity from taking any lawful adverse

action against a current occupant for reasons other than a person's arrest record or criminal history, including the person's acts of physical violence against persons or property on the premises and other acts that would adversely affect the health, safety, or welfare of other residents, or excuse a covered entity from complying with applicable laws relating to victims of domestic violence, sex offenses or stalking.

d. Paragraph b shall not apply to the following:

(1) Actions taken by a covered entity to exclude a person from a housing accommodation based on the person's arrest record or criminal history where such exclusion is required pursuant to any federal, state, or local law or rule or regulation, provided that the covered entity shall provide the person a citation to the law, rule or regulation that requires such action.

(2) Actions taken by a covered entity pursuant to any federal, state or local law or rule or regulation that requires criminal background checks for housing eligibility, provided that prior to taking any adverse action that is not required by such law, the covered entity shall comply with paragraphs e and f; and

(3) Inquiries into the New York sex offense registry maintained by the state division of criminal justice services pursuant to section 168-b of the correction law, or adverse actions taken by a covered entity against a person listed publicly on such registry, provided that prior to taking any adverse action that is not required by such law, the covered entity shall comply with paragraphs e and subparagraphs (1) and (2) of paragraph f.

e. Notice of inquiry. Except where providing notice would conflict with a requirement of federal or state law, rule or regulation, prior to any inquiry into, gathering of, or use of criminal history information a covered entity must:

(1) Notify an individual in writing of the inquiry; and

(2) Provide the individual a reasonable amount of time to withdraw their application for housing, not to exceed three days.

f. Fair housing process. Except where following this process would conflict with a requirement of federal or state law, rule or regulation, after providing notice, and prior to any adverse action based on arrest record or criminal history, the covered entity shall provide:

(1) A written copy of the inquiry on which the intended adverse action is based and allow the person a reasonable amount of time of at least five business days, during which the covered entity must hold the housing unit open, to dispute the accuracy of the inquiry and respond with rebutting or mitigating information prior to the denial of the person's housing application.

(2) A copy of supporting documents that were reviewed, and a statement of the legitimate, non-discriminatory interest of the covered entity in protecting property and the safety and welfare of others;

(3) A copy of the analysis and the covered entity's reasons for intending to take adverse action against such person in a manner to be determined by the commission, identifying which of the following fair housing factors were taken into account:

(A) The time that has elapsed since the date of the offense;

(B) The age of the individual at the time of the offense;

(C) Evidence of good tenant history;

(D) Any additional information produced by an individual or on their behalf, in regards to their rehabilitation or good conduct, including but not limited to history of conduct in the community;

(E) The seriousness of the person's offense; and

(F) The legitimate interest of the owner in protecting property, and the safety and welfare

of specific individuals.

g. The requirements of paragraphs e and f shall be satisfied where a covered entity follows a substantially similar process under federal, state or local law, regulations or rules that provides notice and an opportunity for the person to submit rebutting information before the actual denial of a housing accommodation.

h. Paragraph b shall not apply to the sale or rental of:

(1) A housing accommodation, other than a publicly-assisted housing accommodation, in a building that contains housing accommodations for not more than two families living independently of each other, if the owner or members of the owner's family reside in one of such housing accommodations; or

(2) A room or rooms in a housing accommodation, other than a publicly-assisted housing accommodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and the owner or members of the owner's family reside in such housing accommodation.

i. To the extent permitted by law, a covered entity's compliance with this subdivision shall not constitute a basis for liability under other laws.

§ 2. This local law shall take effect 200 days after it becomes law, except that the commission may take such actions as are necessary to implement this local law, including the promulgation of rules, before such date.

Session 12
JG
LS# 7771
3/7/22 11:59 AM

Session 11
ZH/NJC/BAM/JG
LS #1362/3742/6346/9780
12/7/2021 11:35 PM