

[First Reprint]

SENATE, No. 250

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Co-Sponsored by:

Senator Ruiz

SYNOPSIS

“Fair Chance in Housing Act”; establishes certain housing rights of persons with criminal records.

CURRENT VERSION OF TEXT

As reported by the Senate Community and Urban Affairs Committee on July 16, 2020, with amendments.



(Sponsorship Updated As Of: 12/7/2020)

1 AN ACT concerning the housing rights of persons with criminal
2 records and supplementing P.L.1945, c.169 (C.10:5-1 et seq.).

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. This act shall be known and may be cited as the “Fair
8 Chance in Housing Act.”

9
10 ¹2. The Legislature finds and declares that:

11 a. Recent research indicates that New Jersey suffers from a
12 tragically high 36-month recidivism rate of over 30 percent;

13 b. Housing instability appears to impact recidivism, considering
14 that over one in 10 prisoners in the United States face homelessness
15 upon release;

16 c. Research from other states indicates a substantial increase in
17 the likelihood of a parolee’s arrest following each change in
18 address, further supporting the conclusion that when ex-convicts are
19 unable to find stable housing, recidivism becomes more likely and
20 public safety is diminished;

21 d. Prior to the 1990s when popular guidance documents began
22 advising landlords to conduct criminal background checks on
23 prospective tenants, criminal background information was not
24 widely-available and convenient to landlords for informing rental
25 decisions, but many landlords were nonetheless able to maintain
26 safe and healthy rental properties; and

27 e. It is, therefore, necessary and in the public interest for the
28 Legislature to enact legislation to supplement the “Law Against
29 Discrimination,” P.L.1945, c.169 (C.10:5-1 et seq.), for the purpose
30 of establishing certain housing rights of persons with criminal
31 records.¹

32
33 ¹**[2.] 3.**¹ As used in this act:

34 "Applicant" means any person considered for, who requests to be
35 considered for, or who requests to be considered for tenancy within
36 a rental dwelling unit.

37 “Conditional offer” means an offer to rent or lease a rental
38 dwelling unit to an applicant that is contingent on a subsequent
39 inquiry into the applicant’s criminal record, or any other eligibility
40 criteria that the housing provider may lawfully utilize.

41 “Criminal record” means information collected by criminal
42 justice agencies on individuals consisting of identifiable
43 descriptions and notations of arrests, detentions, indictments, or
44 other formal criminal charges, and any disposition arising
45 therefrom, including acquittal, sentencing, correctional supervision,

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCU committee amendments adopted July 16, 2020.

1 release or conviction, including, but not limited to, any sentence
2 arising from a verdict or plea of guilty or nolo contendere, including
3 a sentence of incarceration, a suspended sentence, a sentence of
4 probation, or a sentence of conditional discharge.

5 “Housing provider” means a landlord, an owner, lessor,
6 sublessor, assignee, or their agent, or any other person receiving or
7 entitled to receive rents or benefits for the use or occupancy of any
8 rental dwelling unit.

9 “Pending criminal accusation” means an existing accusation that
10 an individual has committed a crime, lodged by a law enforcement
11 agency through an indictment, information, complaint, or other
12 formal charge.

13 “Rental dwelling unit” means a dwelling unit offered for rent by
14 a housing provider for residential purposes, other than a dwelling
15 unit in an owner-occupied premises of not more than three dwelling
16 units.

17
18 ¹[3.] 4.¹ a. (1) A housing provider shall not require an
19 applicant to complete any housing application that includes any
20 inquiries regarding an applicant’s criminal record prior to the
21 provision of a conditional offer ¹, except that a housing provider
22 may consider whether an applicant has ever been convicted of drug-
23 related criminal activity for the manufacture or production of
24 methamphetamine on the premises of federally assisted housing,
25 and whether the applicant is subject to a lifetime registration
26 requirement under a State sex offender registration program¹.

27 (2) A housing provider shall not make any oral or written
28 inquiry regarding an applicant’s criminal record prior to making a
29 conditional offer.

30 (3) An applicant may provide evidence to the housing provider
31 demonstrating inaccuracies within the applicant's criminal record or
32 evidence of rehabilitation or other mitigating factors.

33 b. ¹[Notwithstanding the provisions of subsection a. of this
34 section, if an applicant discloses any information regarding the
35 applicant’s criminal record, by voluntary oral or written disclosure,
36 prior to the conditional offer, the housing provider may make
37 inquiries regarding the applicant’s criminal record prior to making
38 the conditional offer.

39 c. ¹[Prior to accepting any application fee, a housing provider
40 shall disclose in writing to the applicant:

41 (1) Whether the eligibility criteria of the housing provider
42 include the review and consideration of criminal history; and

43 (2) A statement that the applicant, pursuant to subsection a. of
44 this section, may provide evidence demonstrating inaccuracies
45 within the applicant's criminal record or evidence of rehabilitation
46 or other mitigating factors.

1 ¹**[d.]** c. A housing provider shall not, either before or after the
 2 issuance of a conditional offer, evaluate an applicant based on any
 3 of the following types of criminal records:

4 (1) arrests or charges that have not resulted in a criminal
 5 conviction;

6 (2) expunged convictions;

7 (3) convictions on appeal;

8 (4) vacated and otherwise legally nullified convictions;

9 (5) juvenile adjudications of delinquency;

10 (6) records that have been sealed; and

11 (7) criminal convictions arising for conduct committed outside
 12 of the State that, if committed within the State, would not constitute
 13 an indictable offense.

14 d.¹ After the issuance of a conditional offer to an applicant, a
 15 housing provider may only consider a criminal record in the
 16 applicant's history that:

17 (1) ¹**[has occurred within]** resulted in a conviction that was
 18 issued within, or if the conviction resulted in a prison sentence that
 19 sentence concluded within,¹ the ¹**[10]** three¹ years immediately
 20 preceding the issuance of the conditional offer ; and

21 (2) consists of a ¹**[pending criminal accusation or a]**¹ criminal
 22 conviction that, pursuant to subsection b. of N.J.S.2C:52-2, is not
 23 eligible for expungement.

24 e. ¹**[(1)]**¹ A housing provider may withdraw a conditional offer
 25 based on an applicant's criminal record only if the housing provider
 26 determines, ¹**[on balance]** by clear and convincing evidence¹, that
 27 the withdrawal ¹**[achieves a substantial, legitimate,**
 28 **nondiscriminatory interest. (2)]** is necessary, because the
 29 applicant's criminal conduct renders the applicant unfit for the
 30 housing arrangement applied for.¹ The housing provider's
 31 determination of ¹**[a nondiscriminatory interest]** unfitness for
 32 housing¹ shall be reasonable in light of the following factors:

33 ¹**[(a)]** (1)¹ The nature and severity of the criminal offense;

34 ¹**[(b)]** (2)¹ The age of the applicant at the time of the occurrence
 35 of the criminal offense;

36 ¹**[(c)]** (3)¹ The time which has elapsed since the occurrence of
 37 the criminal offense;

38 ¹**[(d)]** (4)¹ Any information produced by the applicant, or
 39 produced on the applicant's behalf, in regard to the applicant's
 40 rehabilitation and good conduct since the occurrence of the criminal
 41 offense;

42 ¹**[(e)]** (5)¹ The degree to which the criminal offense, if it
 43 reoccurred, would negatively impact the safety of the housing
 44 provider's other tenants or property; ¹**[and**

45 **(f)]** (6)¹ Whether the criminal offense occurred on or was
 46 connected to property that was rented or leased by the applicant ¹;

1 (7) Whether the offense arose from an applicant's status as a
2 survivor of domestic violence, sexual assault, stalking or dating
3 violence;

4 (8) Whether the offense arose from an applicant's mental illness
5 or other disability; and

6 (9) If the applicant was under the influence of alcohol or illegal
7 drugs at the time of the offense, whether the applicant is in
8 recovery, or has recovered and rehabilitated, from the associated
9 addiction. Evidence of recovery and rehabilitation shall include, at
10 a minimum:

11 (a) the satisfactory compliance of an applicant with the terms
12 and conditions of parole or probation, provided that the failure of
13 the person to pay fines, fees, and restitution shall not be considered
14 noncompliance with terms and conditions of parole or probation;

15 (b) educational attainment or vocational or professional training,
16 or employment since conviction, including training received or
17 employment while incarcerated;

18 (c) completion of, or active participation in, rehabilitative
19 treatment, including alcohol or drug treatment; and

20 (d) letters of recommendation from community organizations,
21 counselors, case managers, teachers, faith leaders, community
22 leaders, parole officers, and probation officers who have observed
23 the applicant¹.

24 f. ¹**[(1)]**¹ If a housing provider withdraws a conditional offer,
25 the housing provider shall provide the applicant ¹, free of charge,¹
26 with ¹a¹ written notification that includes, with specificity ¹**[.]** :

27 (1) an explanation of what was concluded on each of the factors
28 considered pursuant to subsection f. of this section;

29 (2)¹ the reason or reasons for the withdrawal of the conditional
30 offer ¹**[and]** ;

31 (3) a copy of the criminal records and other information that the
32 housing provider relied on to inform the decision;

33 (4)¹ a notice ¹, in both English and Spanish,¹ that advises the
34 applicant of the applicant's right to file a complaint with the
35 Attorney General pursuant to section ¹**[6 of this act]** 9 of P.L. , c.
36 (C.) (pending before the Legislature as this bill); and

37 (5) a written offer, provided in Spanish, to provide the applicant
38 with the explanations required pursuant to paragraphs (1) and (2) of
39 this subsection in Spanish, if that is the applicant's primary
40 language¹.

41 ¹**[(2) (a)]** The applicant may request, within 20 days after the
42 housing provider's notice of the withdrawal, that the housing
43 provider afford the applicant a copy of all information that the
44 housing provider relied upon in considering the applicant, including
45 criminal records.

(b) A housing provider shall provide the information requested under subparagraph (a) of this paragraph, free of charge, within 10 days after receipt of a timely request.

g. Nothing set forth in this act shall be construed to prohibit a housing provider from requiring an applicant to complete a housing application that includes any inquiries regarding an applicant's criminal record after the conditional offer is provided or from making any oral or written inquiries regarding an applicant's criminal record after the conditional offer is provided. The provisions of this section shall not preclude a housing provider from refusing to provide housing to an applicant based upon the applicant's criminal record, unless the criminal record or relevant portion thereof has been expunged or erased through executive pardon, provided that such refusal is consistent with other applicable laws, rules and regulations.]

g. A housing provider shall apply the standards established by this section to each applicant in a nondiscriminatory manner¹.

¹[4. Unless otherwise permitted or required by law, a] 5. a. A¹ housing provider shall not knowingly or purposefully publish, or cause to be published, any housing advertisement that explicitly provides that the housing provider will not consider any applicant who has been arrested or convicted of one or more crimes or offenses ¹, except for drug-related criminal activity for the manufacture or production of methamphetamine on the premises of federally assisted housing, and whether the applicant is subject to a lifetime registration requirement under a State sex offender registration program.

b. Unless otherwise required by law, a housing provider shall not:

(1) distribute or disseminate an applicant's criminal record to any person who is not expected to use the criminal record for the purpose of evaluating the applicant in a manner consistent with P.L. c. , (C.) (pending before the Legislature as this bill); or

(2) use an applicant's criminal record for a purpose that is not consistent with P.L. c. , (C.) (pending before the Legislature as this bill)¹.

¹[5. This act shall not apply:

a. If a federal law or regulation requires the housing provider to consider an applicant's criminal records for residential leasing purposes; or

b. If a federal law or regulation otherwise allows for the denial of an applicant due to certain criminal convictions.]¹

1 ¹6. A housing provider shall not require an applicant to submit
2 to a drug or alcohol test, or request the applicant's consent to obtain
3 information from a drug abuse treatment facility.¹
4

5 ¹7. A person shall not interfere with, restrain, or deny the
6 exercise of, or the attempt to exercise, any right protected under
7 P.L. , c. (C.) (pending before the Legislature as this bill).
8 It shall be a rebuttable presumption of unlawful retaliation if a
9 housing provider or any other person takes an adverse action
10 against a person within 90 days of the person's exercise of the
11 rights protected in P.L. , c. (C.) (pending before the
12 Legislature as this bill). This rebuttable presumption shall be
13 sufficient to establish unlawful retaliation, unless the housing
14 provider or other person is able to demonstrate that the action
15 would have been taken in the absence of such protected activity.¹
16

17 ¹8. The Division on Civil Rights shall maintain data on the
18 number of complaints filed pursuant to P.L. , c. (C.)
19 (pending before the Legislature as this bill), demographic
20 information on the complaints, the identity of the housing
21 providers, the number of investigations conducted, and the
22 disposition of every complaint and investigation, which shall be
23 published and posted online annually.¹
24

25 ¹**[6.] 9.¹** a. A person claiming to be aggrieved pursuant to this
26 act may file a complaint or action with the Division on Civil Rights
27 or in the Superior Court of New Jersey alleging a violation of the
28 "Law Against Discrimination," P.L.1945, c.169 (C.10:5-1 et seq.).

29 b. Any housing provider who violates this act shall be liable for
30 a civil penalty in an amount not to exceed \$1,000 for the first
31 violation, \$5,000 for the second violation, and \$10,000 for each
32 subsequent violation collectible by the Attorney General in a
33 summary proceeding pursuant to the "Penalty Enforcement Law of
34 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
35

36 ¹**[7.] 10.¹** In accordance with the "Administrative Procedure
37 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Attorney General
38 ¹**[may] shall¹** adopt the rules and regulations necessary to
39 effectuate the purposes of ¹**[this act]** P.L. c. , (C.) (pending
40 before the Legislature as this bill) on or before the first day of the
41 fifth month next following enactment¹.
42

43 ¹**[8.] 11.¹** This act shall take effect on the first day of the
44 seventh month next following the date of enactment, but the
45 Attorney General may take any anticipatory administrative action in
46 advance as shall be necessary for the implementation of this act.