

Testimony of
Alison Wilkey, Director of Public Policy
On behalf of
John Jay College Institute for Justice and Opportunity
Before
The Council of the City of New York
Committees on General Welfare and Civil and Human Rights Oversight Hearing:
Rental Assistance and Source of Income Discrimination

Good afternoon. My name is Alison Wilkey and I am the Director of Public Policy at the John Jay College Institute for Justice and Opportunity. I want to thank Chairs Levin and Eugene for the opportunity to present testimony today about Intro 2047-2020, Prohibiting housing discrimination based on arrest or criminal record.

I. John Jay College Institute for Justice and Opportunity

The John Jay College Institute for Justice and Opportunity's (Institute) mission is to create opportunities for people to live successfully in the community after involvement with the criminal legal system by addressing structural racial and economic inequalities. Much of our work focuses on increasing access to higher education and career pathways for people with conviction histories. Housing policy became a focus for the Institute because so many of the college students we serve who have been impacted by the criminal legal system have trouble finding and maintaining housing. Housing instability interferes with students' ability to enroll and succeed through graduation. In this way, and so many others, the inability to access housing is a barrier to economic opportunity.

While my testimony is focused on discrimination based on a conviction history, we also want voice support for increased rental assistance and ending voucher discrimination. All the bills under discussion today are important pieces of the changes we need to break down the racial and economic barriers that prevent New Yorkers from accessing a safe and stable place to call home.

I have submitted written testimony, but want to focus my time here to speak about the issue of safety and to address any critics who say that this bill would limit the ability of landlords to provide safe housing for tenants. First, it is important to be clear that increasing access to housing increases safety. An inability to meet economic needs is a key driver of violence.¹ Housing is a core human need; it provides a foundation for people to get and keep jobs, to care for their families, and to contribute positively to their communities. It is the foundation for economic well-being, which decreases violence. For people who have been in the criminal legal system, stable housing also decreases recidivism. When we eliminate barriers to housing, we improve neighborhood safety for everyone.

¹ <https://www.vera.org/downloads/publications/accounting-for-violence.pdf>

Second, it is a fallacy to believe that a conviction history tells us who will be a good tenant or neighbor. Using background checks to determine whether a person would be a good tenant simply entrenches our racist criminal legal system. The racial inequities of our criminal legal system are well documented, and have been brought fully to attention in the recent months of protests sparked by the killing of Black men and women by police. Yet, we are still living with the reality that 1 in 3 African-American adult men has a felony conviction in the United States.² This reflects the reality that Black people and other people of color are the targets of law enforcement, and are treated more harshly and have worse outcomes once in the criminal legal system. Landlords definitely have white tenants who have possessed or sold drugs when they were young, or vandalized property, or engaged in other criminal acts. But those white tenants didn't live in highly-policed neighborhoods, so they didn't end up in the criminal legal system, and end up with the lifetime barrier of a conviction record. A conviction record says more about the circumstances of your birth, than the content of your character.

And what we think we know about risk turns out to be false. People with the most serious convictions typically have the lowest recidivism rates.

For landlords who may have a genuine concern about creating a safe community; this bill does not change that. Nothing in this bill takes away the ability of landlords to do reference checks and get information about a person's past tenancy. Nor does it take away the ability to address an existing tenant who is causing a problem—so long as the basis for that action is for the behavior, not an arrest or conviction.

Removing the ability of landlords to deny housing based on a background check poses no risk to landlords. No landlord has ever been held liable for failing to perform a background check or sufficiently investigate a tenant's background. Courts have held that landlords are expected to protect tenants only from reasonably foreseeable harm. And landlords will save costs of doing background checks, since new State law last year prohibits housing providers from charging a prospective tenant more than \$20 for a background check.

The widespread use of background checks in tenant selection is a contributor to the City's housing and shelter crisis. People with conviction histories, who have served their time and paid their penalty, face ongoing and perpetual punishment through background checks. Research shows that a conviction record reduces the probability of New York City landlords' allowing prospective tenants to even *view* an apartment by over 50%.³ Nationally, formerly incarcerated people are nearly 10 times more likely to be homeless than the general public.⁴

² Shannon, S.K.S. Uggem, C., Schnittker, J. et al. (2017). The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948-2010. *Demography*, 54(5), 1795-1818.

<https://doi.org/10.1007/s13524-017-0611-1>

³ Evans, D.N. & Porter, J.R. Criminal history and landlord rental decisions: a New York quasi-experimental study. (2015). *Journal of Experimental Criminology*, 11(1), 21–42. doi: 10.1007/s11292-014-9217-4

⁴ <https://www.prisonpolicy.org/reports/housing.html>

Intro 2047-2020 would address this problem by making it a discriminatory practice to deny a person housing because of their arrest or conviction history. This law is similar to other laws—known as “Fair Chance Housing” laws—passed in a dozen other cities and counties in the United States. Cities like Berkeley, California enacted a Fair Chance Housing law “critical strategy to house currently unhoused people and also prevent more people from becoming homeless.”⁵

Critically, this bill is structured in way that avoids the problems we have seen with the City’s ground-break Fair Chance for employment law passed in 2015, and with other “ban the box” style laws. Those laws simply delay the background check until later in the process. At that later point, the decision-maker can still discriminate so long as they can come up with some basic reasons why the conviction poses a problem. It allows for pretextual reasons to be offered, when the true source is blatant discrimination. The “ban the box” style bill is also unrealistic for the New York City housing market. For those bills to work, there has to sufficient notice of adverse action, giving the applicant time to respond with documentation about rehabilitation. There also has to be sufficient time for the applicant to dispute errors in the record. The New York City housing market moves at lightning speed, and the requirements of “ban the box” style bills will simply not work, and those delays will hurt everyone, including landlords.

However, there is one issue that cannot go unmentioned: the plight of public housing residents. Given Federal and State law, the City has limited ability to mandate changes to the admission policies of public housing residents. Currently, NYCHA rejects all applicants if they have been convicted of a B misdemeanor—the lowest level conviction—in the past two years, with automatic denials for other convictions extending up to six years. NYCHA also evicts residents who are arrested—sometimes before a person has been convicted. While Intro 2047-2020 cannot help NYCHA residents, we cannot let New York City’s largest landlord continue with these racist and inequitable policies. NYCHA can change their policies and it is long past time for them to do so.

II. Conclusion

It is critical for New York City to give people a fair chance to obtain and maintain housing. Intro 2047-2020 is a necessary step because housing is a human right. If you have any questions, you can reach me at awilkey@jjay.cuny.edu.

September 15, 2020

⁵ Oakland Municipal Code Chapter 8.25