

FAQs

(frequently asked questions)
about

AB 396: JONES-SAWYER

Fair Chance at Housing Act

*Everyone deserves a safe
and stable home*

Why Is AB 396 Necessary?

People with criminal records need a fair chance to access one of the most fundamental building blocks of a stable life—a place to live.

Although people leaving incarceration face numerous challenges upon release, housing is essential to successful reentry. While not required, over 80% of housing providers run criminal background checks that ultimately bar a number of people from housing leaving them homeless and vulnerable to unhealthy conditions.

What Will AB 396 Do?

AB 396 will:

- Reduce barriers people with criminal records face when looking for housing.
- Allow prospective tenants to be considered in a holistic manner, on equal status with other rental applicants.
- Allow prospective tenants to not disclose arrests that didn't lead to a conviction, convictions that have been expunged/exonerated, participation in diversion/deferred judgment programs, or adjudications incurred in the juvenile justice system.
- Preserve a housing provider's discretion to run a criminal background check and consider an applicant's criminal record when making a final rental decision.

AB 396 Is Considered A "Fair Chance" Policy, What Does That Mean?

"Fair chance" policies have generally been applied to hiring practices to create equal opportunities for formerly incarcerated people to find and retain employment.

In the housing context, a fair chance policy **does not** require a housing provider to rent to prospective tenant. The housing provider retains the discretion to rent to the most qualified rental applicant.

How Does AB 396 Make My Community Safer?

Reducing recidivism is a primary goal of AB 396. When people have stable housing, the chance of them re-offending significantly decreases. In fact, finding housing within the first month after release is critical to people leaving incarceration. People released without stable housing are 7x more likely to re-offend within the first month than a person with some form of housing.

AB 396 promotes community wellbeing, reduces recidivism, and improves public safety for all.

How Does AB 396 Keep Families Together?

Housing prohibitions against people with criminal records do not stand in isolation.

By prohibiting people with criminal records from housing, families are often left with two choices:

1. They struggle to look for adequate housing that will accept all members of their family, or
2. They are ripped apart.

Like all of us, people with criminal records have mothers, fathers, daughters and sons. As the former U.S. Secretary of Housing and Urban Development ("HUD") recognized in a letter to encourage HUD-assisted owners to develop

policies to allow formerly incarcerated individuals to join their families, "people who have paid their debt to society deserve the opportunity to become caring parents, supportive parents, and caregivers to their elderly parents."

Housing Is Difficult For Everybody. Why Should People With Criminal Records Be Prioritized Over Me?

AB 396 **does not** prioritize prospective tenants with criminal records over others. AB 396 only prohibits housing providers from excluding a person based on their criminal history alone. In other words, AB 396 makes sure a person with a criminal record has an equal opportunity to obtain housing in a difficult housing market.

How Is Removing Barriers To Housing For Formerly Incarcerated People Good For Taxpayers?

Impact on Women & Families

The number of women in prison & jail has increased 1.5 times the rate of men since 1980 (646% versus 419%). 2/3 of incarcerated women are mothers of children under the age of 18 & at least 77% were the primary caregivers of their child(ren) before incarceration.

With more than 1 million women under the U.S. criminal system's supervision, obtaining stable housing is one of the key ingredients to successful reintegration into the community and is vital in reuniting women with their children.

Lack of housing is one of the main obstacles for people returning home from incarceration or for people bringing their children home. When people and families are unable to find housing that will accept all members of the family, it is taxpayers who must fund their housing.

Homeless shelters and foster homes are often the only answer. According to the National Housing Law Project, at least 10% of people on parole are homeless nationwide. California ranks third in the country as having the most homeless people. In cities such as Los Angeles and San Francisco, 30% to 50% of people on parole are homeless. In other words, restrictive housing policies result in our community's homeless shelters and foster care systems being unfairly burdened.

How Many People With Records Are Impacted By Lack Of Housing?

Estimates show that around 70 million people in the U.S. (and in California, 1 in 4 adults) has an arrest or conviction history that can show up on background checks for housing. Further, with the passage of Proposition 47, thousands more people in California have been or will be released and need housing. Ensuring those recently released are not unduly barred from housing will reduce the likelihood that they will recidivate, ensure safer communities, and keep families together.

Does AB 396 Prevent Housing Providers From Running A Background Check?

No. AB 396 specifically allows housing providers to run a criminal background check after initial rental criteria have been checked and verified.

However, recent research shows that a person's criminal history has little to no relationship to their ability to be a good, law-abiding tenant. In fact, a person with a criminal conviction is no more likely to commit another crime than a person who has never committed a crime where the most recent offense occurred more than 4 to 7 years ago. Even for people with mental illness and chronic substance abuse problems, criminal history does not provide good predictive information about the potential for housing success.

How Will A Landlord Be Protected From Liability If A Tenant With A Criminal History Commits A Crime?

A landlord is protected in several ways. First, a landlord is only liable for the criminal acts of a tenant when the harm is foreseeable. It is not foreseeable that a tenant will commit a crime merely based on the mere existence of a criminal record.

Second, AB 396 does not require landlord rent to a person who poses a threat to the safety of others. The best way to ensure against liability is to practice responsible and targeted screening that considers only the factors indicative of a person's future dangerousness.

Have Other States Or Local Jurisdictions Passed Similar Laws Limiting Housing Providers From Considering Criminal Record?

Yes. In January 2014, Oregon passed a law that prohibits subsidized housing providers from discriminating against prospective tenants based on arrest records or certain types of criminal convictions. In San Francisco, the Fair Chance Ordinance significantly limits how and when a city-funded housing providers may use a prospective tenant's criminal history. In Champaign, Illinois, the city ordinance defines discrimination as any practice or act which is wholly or in part based on the prior arrest or conviction record of any individual.

Moreover, Madison and Dane counties in Wisconsin have prohibited discrimination based on criminal convictions in housing and employment since 1977. Notably, neither county has experienced heightened landlord liability due to safety issues.

FOR MORE INFORMATION

Please Contact

Jane Mantey
Assembly Member Reginald Jones-Sawyer
Jane.Mantey@asm.ca.gov
916-319-2059

Marsha Chien
Legal Aid Society-Employment Law Center
mchien@las-elc.org
415-864-8848

Marlene Hurd
Healthy Communities, Inc.
marlene.hurd@healthycommunities.us
510-444-9655

Irona Lofton
Women's Policy Institute, Women's Foundation
of California
irona_lofton@yahoo.com
707-720-9662

Stephanie Medley
RYSE Center
stephanie@rysecenter.org
510-932-9847

Heather Warnken
Women's Policy Institute, Women's Foundation
of California hwarnken@law.berkeley.edu
410-917-5568