

Testimony of Zoey Chenitz  
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Before the Committee on General Welfare and  
Committee on Civil and Human Rights  
September 15, 2020

Good morning Chairs Levin and Eugene, Public Advocate Williams, and members of the General Welfare Committee and the Committee on Civil and Human Rights. Thank you for convening today's hearing. I am Zoey Chenitz, Senior Policy Counsel at the New York City Commission on Human Rights, and I am pleased to represent the Commission today in support of Intro. 2047, which would amend the New York City Human Rights Law to prohibit most housing providers from inquiring about and discriminating against applicants based on their arrest or conviction history.

Intro. 2047 aligns with the Commission's longstanding commitment to racial justice and greater social equity. As we have been reminded by recent events, including the public health crisis caused by the pandemic and widespread social activism seeking to end systemic racism, too frequently disparities in our city play out along lines of race, whether we are talking about issues of poverty, access to healthcare, health outcomes, food security, or involvement in the criminal legal system. Policies like Intro. 2047 have been enacted in cities across the country. They are growing in popularity because cities recognize that given the long history of racial discrimination in the criminal legal system, arrest or conviction histories ought not to bar people from accessing stable housing for themselves and their families. Policies like this one represent a step toward ensuring that – whether they are recently returning to their communities from custody or if their records are older – New Yorkers with arrest and conviction histories and their families are given the best possible opportunity to thrive. Our conversations with residents and advocates in communities across the city consistently reaffirm the desire for such support.

Our support for this legislation also stems from the Commission's long track record of enforcing protections in the employment context for New Yorkers with a history of criminal system involvement. The first such protections were added in 1977, when the Commission was given joint enforcement authority with the New York State Division of Human Rights over Correction Law Article 23-A.<sup>1</sup> Over the years, additional protections were added to the New York City Human Rights Law,<sup>2</sup> most notably with the passage of the Fair Chance Act in 2015, which prohibits most employers, labor organizations, and employment agencies from inquiring about or considering a job applicant's criminal history until after a conditional offer of employment has been made, and guarantees that job applicants receive proper notice and an opportunity to be heard before they may be rejected from a job based on an individualized assessment of their criminal history.

<sup>1</sup> N.Y. L. 1976, c. 931, § 5 (effective Jan. 1, 1977).

<sup>2</sup> See, e.g., N.Y.C. Local L. 39 (1991); N.Y. S. 1505-C (2019) (amending Exec. L. § 296(16), which is incorporated by reference into the New York City Human Rights Law by N.Y.C. Admin. Code § 8-107(11)).

Since 2015, the Commission has filed 486 complaints alleging employment discrimination based on criminal history, and as of last week, has 145 open matters related to employment discrimination based on criminal history. The Commission has conducted a total of 1,261 tests related to the Fair Chance Act from Fiscal Year 2016 through to the present and filed a total of 100 Commission-initiated complaints resulting from investigative testing. In Fiscal Year 2020, the Commission assessed approximately \$800,000 in damages and civil penalties arising from claims of employment discrimination based on criminal history. The Commission's Law Enforcement Bureau has also been successful in obtaining far-reaching policy reforms that address employment discrimination based on criminal history in systemic ways, with a focus on restorative justice remedies. For example, as the Commission testified in January, the Bureau has settled cases in which respondents have, among other things, agreed to partner with reentry organizations to intentionally include people with criminal histories in the job applicant pool; to incorporate New York City's "ban the box" policies in their job applications for offices nationwide; and to voluntarily disregard certain categories of convictions that are not otherwise subject to such restrictions when assessing job applicants (including all convictions more than seven years old; marijuana convictions over two years old; convictions where the person participated in a diversion program; and juvenile convictions).<sup>3</sup> The Commission is also grateful for its close partnerships with many advocates and community groups that work with us to educate New Yorkers about their rights under the Fair Chance Act, including the Legal Aid Society, Legal Services NYC, the Legal Action Center, VOCAL-NY, the Community Service Society, the Fortune Society, and the Osborne Association, among others.

Despite the absence of specific housing protections based on criminal history, in 2018, the Commission succeeded in resolving a case on behalf of New Yorkers who had been denied housing based on their criminal histories, utilizing a disparate impact theory of discrimination. The case was against PRC Management, LLC, a housing management company that controls 100 buildings with 5,000 units citywide and that had a policy of categorically denying housing to applicants with criminal histories. The Commission charged that this policy had a disparate impact based on race, color and national origin, since Black and Latinx New Yorkers are disproportionately impacted by arrest, conviction, and incarceration rates citywide, and applicants were not afforded an individualized assessment. (The theory of the case was consistent with Fair Housing Act enforcement guidelines issued in 2016 by the United States Department of Housing and Urban Development (HUD).) Under the terms of the settlement, PRC Management agreed to pay \$55,000 in emotional distress damages to a victim impacted in the case and \$25,000 in civil penalties; revise its application and screening policies; train staff on its new policies and the law; and invite applicants with criminal histories who were previously denied housing to reapply.

The Commission strongly supports Intro. 2047, which would provide the first-ever housing protections for New Yorkers specifically based on criminal system involvement. Because disparate impact claims, such as those in the case against PRC Management, can be

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<sup>3</sup> See Testimony of Dana Sussman, Deputy Commissioner for Policy and Intergovernmental Affairs, Before the Committee on Civil and Human Rights (Jan. 22, 2020), [https://www1.nyc.gov/assets/cchr/downloads/pdf/CCHR\\_Testimony\\_FCA\\_1.22.2020.pdf](https://www1.nyc.gov/assets/cchr/downloads/pdf/CCHR_Testimony_FCA_1.22.2020.pdf).

harder to investigate and prove than claims of direct discrimination, this addition to the law would significantly strengthen protections in this area.

Intro. 2047 would effectively prohibit discrimination against prospective tenants who have criminal records by making it an unlawful discriminatory practice under the New York City Human Rights Law for a real estate broker, landlord, or their employee or agent to inquire about or take an adverse action based on a rental applicant's arrest or conviction history. Adverse actions would include denial of a rental application, higher application fees, failure to take action on an application, or the imposition of additional requirements or less favorable lease terms. The bill would also prohibit housing providers from directly or indirectly expressing a limitation based on a rental applicant's arrest or conviction history, for example, by stating in ads and application materials that they will not approve tenants with criminal records. The bill exempts from its coverage any action taken pursuant to a federal or state law or regulation that requires consideration of criminal history for housing purposes. It also would not apply to people renting out a room in their or their family's home, or to people seeking a roommate. Importantly, the bill does not restrict housing providers' ability to pursue legal remedies if a tenant's conduct violates their lease terms. Intro. 2047's simple, straightforward prohibition on inquiries and adverse actions based on criminal history provides clear guidance for housing providers, including smaller and less sophisticated actors, concerning their obligations under the law.

New York City often leads the nation in introducing and implementing new legal protections strengthening human rights. In this area, it is time to amend our law to join the slate of other jurisdictions who have already passed these protections. These jurisdictions include: Seattle,<sup>4</sup> Berkeley,<sup>5</sup> Oakland,<sup>6</sup> the District of Columbia,<sup>7</sup> Los Angeles,<sup>8</sup> San Francisco,<sup>9</sup> Detroit,<sup>10</sup> and Oregon,<sup>11</sup> among others. Intro. 2047 would place New York City among those jurisdictions, including Seattle, Berkeley, and Oakland, with the strongest housing protections based on criminal history.

Expanding the New York City Human Rights Law to protect against housing discrimination based on criminal history would offer multiple potential benefits for the wellbeing of our city. Such protections help to limit disparities in access to stable housing for protected classes of people who already face discrimination in housing and who are overrepresented in the criminal legal system. This includes Black and Latinx people,<sup>12</sup> LGBTQI people,<sup>13</sup> people with

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<sup>4</sup> Seattle Municipal Code § 14.08.050 (2016).

<sup>5</sup> Ordinance No. 7,692-N.S., Berkeley Municipal Code Chapter 13.106 (2020).

<sup>6</sup> Ordinance No. 13581, Oakland Municipal Code Chapter 8.25 (2020).

<sup>7</sup> Code of the Dist. of Columbia § 42-354.01-10 (2017).

<sup>8</sup> Los Angeles, Calif., AB-396 (2015).

<sup>9</sup> San Francisco, Calif., Ordinance § 17-14 (2014).

<sup>10</sup> Detroit City Code, Ch. 26, Art. V (2019).

<sup>11</sup> Oregon Rev. Statutes § 90-303 (2015).

<sup>12</sup> See Michael Schwartz, Michael Winerip & Robert Gebeloff, The Scourge of Racial Bias in New York State's Prisons, N.Y. TIMES (Dec. 3, 2016); New York Independent Budget Office, *NYC's Jail Population: Who's There and Why?* (2013), <https://ibo.nyc.ny.us/cgi-park2/2013/08/nycs-jail-population-whos-there-and-why/> (noting 90 percent of New York City's daily jail population was Black or Hispanic).

<sup>13</sup> See Ilan H. Meyer, et al., *Incarceration Rate and Traits of Sexual Minorities in the United States*, 107 AM. J. PUB. HEALTH: TRANSGENDER HEALTH 234, 234 (2017),

mental health disabilities,<sup>14</sup> victims of sexual violence,<sup>15</sup> and, increasingly, women and mothers.<sup>16</sup> By reducing the collateral consequences of criminal history in the housing context, this bill can help to alleviate problems of housing discrimination and segregation.

Intro. 2047 can also help to address rates of homelessness and housing instability within the city. According to the Coalition for the Homeless, in 2018, at least 20 percent of adults who entered New York City shelters did so directly from a jail or prison,<sup>17</sup> and research shows that jail and prison stays tend to increase the risk of homelessness.<sup>18</sup> As we know, a stable home is the foundation for a person’s wellbeing, as well as the wellbeing of their families and communities. A stable home enables people to find and maintain employment<sup>19</sup> and promotes better health outcomes, since people with a stable home are better able to receive health treatments and to care for children and other dependents.<sup>20</sup> Increasing access to housing also

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[https://www.corrections.com/system/assets/0000/1303/Meyer\\_Final\\_Proofs.LGB\\_In\\_.pdf](https://www.corrections.com/system/assets/0000/1303/Meyer_Final_Proofs.LGB_In_.pdf); Nat’l Ctr. for Transgender Equal., *LGBTQ People Behind Bars A Guide to Understanding The Issues Facing Transgender Prisoners And Their Legal Rights* 5 (2018),

<https://transequality.org/sites/default/files/docs/resources/TransgenderPeopleBehindBars.pdf>.

<sup>14</sup> See N.Y.C. Dep’t of Corr., CAPS and PACE Backgrounder, <https://www1.nyc.gov/site/doc/media/caps.page>; ThriveNYC, Understanding New York City’s Mental Health Challenge, <https://www1.nyc.gov/nyc-resources/thrivenyc.page>.

<sup>15</sup> Rachel Leah, *86 Percent of Women In Jail Are Sexual-Violence Survivors*, Salon (Nov. 11, 2017), <https://www.salon.com/2017/11/11/86-percent-of-women-in-jail-are-sexual-violence-survivors/>.

<sup>16</sup> Nat’l Hous. L. Project, *An Affordable Home on Reentry: Federally Assisted Housing and Previously Incarcerated Individuals* 5 (2018), <https://www.nhlp.org/wp-content/uploads/2018/08/Rentry-Manual-2018-FINALne.pdf> (women are the fastest growing segment of the United States prison population); Women’s Prison Assoc., *Quick Facts*, <https://www.wpaonline.org/resources/quick-facts> (“most women in prison are mothers. Women are more likely than men to be the primary caregiver of their children before and after incarceration.”); Dan Levin, *As Mothers Fill Prisons, Children Suffer a “Primal Wound”*, N.Y. Times, Dec. 28, 2019, <https://www.nytimes.com/2019/12/28/us/prison-mothers-children.html> (“the number of incarcerated women has grown by more than 750 percent, at a rate twice that of men” since 1980; “at least 5 million children—or about 7 percent of American youth—have an incarcerated parent”).

<sup>17</sup> Coalition for the Homeless, *State of the Homeless 2020*, <https://www.coalitionforthehomeless.org/state-of-the-homeless-2020/> (these numbers include only people returning from state prison and people returning from Rikers who are subject to the *Brad H.* settlement, concerning former inmates with mental health disabilities, and thus are likely an undercount of returnees entering New York City shelters following incarceration).

<sup>18</sup> Lucius Couloutte, *Nowhere to Go: Homelessness Among Formerly Incarcerated People*, Prison Policy Initiative (Aug. 2018), <https://www.prisonpolicy.org/reports/housing.html#:~:text=The%20revolving%20door%20%26%20homelessness&text=But%20people%20who%20have%20been,from%20their%20first%20prison%20term> (showing that people who are formerly incarcerated experience homelessness at a rate ten times higher than does the general public).

<sup>19</sup> See Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity among the Working Poor*, Social Problems (2016), <https://scholar.harvard.edu/files/mdesmond/files/desmondgershenson.sp2016.pdf?m=1452638824> (finding loss of housing “to be a strong and robust predictor of job loss” and identifying “housing insecurity as an important source of employment insecurity among low-income workers”); U.S. Interagency Council on Homelessness, *The Importance of Housing Affordability and Stability for Preventing and Ending Homelessness* (May 2019), [https://www.usich.gov/resources/uploads/asset\\_library/Housing-Affordability-and-Stability-Brief.pdf](https://www.usich.gov/resources/uploads/asset_library/Housing-Affordability-and-Stability-Brief.pdf) (“A stable home provides a platform for improved outcomes around employment, health, and education.”).

<sup>20</sup> See Lauren Taylor, *Housing And Health: An Overview Of The Literature*, Health Affairs (June 7, 2018) <https://www.healthaffairs.org/doi/10.1377/hpb20180313.396577/full/> (“providing access to stable housing can improve health and reduce health care costs”); Nat’l Healthcare for the Homeless Council, *Homelessness & Health: What’s the Connection?* (Feb. 2019) <https://nhhc.org/wp-content/uploads/2019/08/homelessness-and-health.pdf>

significantly reduces rates of child poverty,<sup>21</sup> and rates of recidivism.<sup>22</sup> In short, we all stand to benefit when barriers are removed to stable, affordable housing for our fellow New Yorkers. While this bill will not, on its own, solve all of the challenges facing people with a criminal history, we believe it is an essential step toward helping our city move toward a brighter future.

For all the reasons I have discussed, the Commission strongly supports Intro. 2047 and we look forward to working on it with you. Thank you.

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<sup>21</sup> Mary K. Cunningham, *Reduce Poverty by Improving Housing Stability*, The Urban Inst. (June 26, 2016), <https://www.urban.org/urban-wire/reduce-poverty-improving-housing-stability>; Misha Sharp and Nathan Myers, *Stable Housing, Stable Health: Addressing Housing Insecurity Through Medicaid Value-Based Payment*, United Hospital Fund, <https://uhfnyc.org/publications/publication/stable-housing-stable-health-addressing-housing-insecurity-through-medicaid-value-based-payment/> (“research consistently show[s] how unstably housed or homeless individuals are more likely to experience high rates of emergency department use, frequent and costly hospital admission, and adverse health outcomes such as drug and alcohol dependence, mental illness, infectious disease, injuries, and unmet health care needs.”).

<sup>22</sup> Nat’l Hous. L. Project, *An Affordable Home on Reentry: Federally Assisted Housing and Previously Incarcerated Individuals* 6 (2018), [http://nhlp.org/files/Page%204%20Doc%201%20Prisoner\\_Reentry\\_FINAL.pdf](http://nhlp.org/files/Page%204%20Doc%201%20Prisoner_Reentry_FINAL.pdf).