Your Rights Under the Fair Chance Housing Act

If you are applying for housing, a law in New Jersey called “The Fair Chance Housing Act” (FCHA) will now protect you from landlords who might discriminate against you because of your past criminal records.

What are my rights under the FCHA?

In most cases, landlords cannot ask about or consider your criminal records during the application process before they make you a conditional offer of housing. A conditional offer means that your housing application has been approved, but still may be subject to satisfactory review of your background check. The FCHA is intended to remove barriers for people with criminal records seeking a place to live in New Jersey.

After a conditional offer, landlords can only consider:

- Convictions for murder, aggravated sexual assault, kidnapping, arson, human trafficking, sexual assault in violation of N.J.S.A. 2C:14-2, causing or permitting a child to engage in a prohibited sexual act or in the simulation of such an act in violation of paragraph (3) of subsection b. of N.J.S.A. 2C:24-4, or any crime that resulted in lifetime registration in a state sex offender registry;
- First-degree indictable convictions when the conviction was entered or prison sentence concluded within the previous six years prior to the offer;
- Second- and third-degree indictable offenses when the conviction was entered or prison sentence concluded within the previous four years; and
- Fourth-degree offenses when the conviction was entered or prison sentence concluded within one year of the offer.

A landlord cannot consider:

- Cases that did not result in a criminal conviction;
- Expunged, sealed or pardoned convictions;
- Vacated or nullified convictions;
- Juvenile adjudications of delinquency; and
- Offenses committed in a different
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This newsletter is for general information only. If you have a legal problem, you should see a lawyer.

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state that have been decriminalized within New Jersey.

Before a conditional offer, landlords can only consider whether you were convicted of manufacturing or producing drugs on the premises of federal housing facilities, or whether you are subject to the Megan’s Law state sex offender registration program.

A landlord can only withdraw a conditional offer if your criminal record demonstrates risk to safety or property and the landlord’s withdrawal of the offer achieves a “substantial, legitimate, non-discriminatory interest.” In making that determination, the landlord must make an “individualized assessment” considering:

• The nature and severity of the crime, including the degree;
• Time since the criminal offense;
• Any information you can provide about your rehabilitation and good conduct since the offense;
• Whether the crime reoccurred and negatively impacted the safety of the housing provider; or
• Whether the offense occurred on or was connected to the property that you rented or leased.

If your landlord says your record demonstrates a risk to safety or property, you should gather proof of rehabilitation such as degrees, vocational and educational certifications, good conduct letters, resumes, reference letters from employers, teachers, mentors and prior landlords, and evidence of volunteer, public service and civic activity.

**What notice am I entitled to under the FCHA?**

A landlord must notify you that your criminal records may be considered but that you will have an opportunity to provide evidence of inaccuracies, rehabilitation, or factors that weigh favorably in review of your offenses.

A landlord must also provide you with written notice if they withdraw a conditional offer because of your criminal record. They must provide specific reasons for the withdrawal and inform you of your right to file a complaint. Within 30 days of the withdrawal, you can request a copy of all information the landlord used to consider your application. The landlord must provide the information without charge within 10 days of your request.

Landlords cannot publish advertisements indicating that they will not consider applicants with a criminal record (except for: 1. drug related activity for the manufacturing or production of methamphetamine in federally assisted housing, or 2. for being subject to a lifetime state sex offender registration program).

**What if a landlord violates the FCHA?**

Applicants who are denied federally subsidized housing, such as public housing or a unit in a complex where HUD subsidizes the rent, or who are denied a Section 8 or State Rental Assistance Program voucher, have the right to appeal the denial.

If a landlord violates any provision of the FCHA, you can file a complaint with the Division on Civil Rights. If the Division finds that a landlord violated the FCHA, they can be fined $1,000 for the first violation, and up to $10,000 if they violated the law two or more times within a seven-year period. You may also be able to have your housing application fee refunded. You can access the Division on Civil Rights online complaint portal, NJ BIAS, at [https://bias.njcivilrights.gov/en-US](https://bias.njcivilrights.gov/en-US).
Reentry Benefits Extended and Longstanding Drug Conviction Ban Repealed

A new law, effective immediately, expands the scope of benefits available to people returning home from prisons and jails in New Jersey. Benefits previously provided to those released from state prisons are extended to include those released from county jails and facilities.

What happens when I am released?

If you are released from jail after being incarcerated for 90 days or longer, you are entitled to a number of important benefits at least 30 days prior to release, including:

- A copy of your criminal history record and information on expungement and voting rights;
- Information about programs that will assist with employment, vocation, or educational rehabilitative programs;
- A record of your participation in education, training and employment, medical, or treatment programs while incarcerated;
- An accounting of your outstanding fines and fees, and child support payments;
- Assistance in obtaining a Social Security card, and a birth certificate if you were born in New Jersey;
- A two-week supply of prescription medications and, if applicable, an additional two-week prescription order with two additional refills; and
- A medical discharge summary and instructions to obtain your full medical history record.

Assistance with Medicaid and other benefits applications

The warden, executive officer, or keeper of each county jail facility must offer resources for you to get help in completing applications for Medicaid, Social Services, SNAP, and WorkFirst New Jersey programs.

Your prison or jail ID card will be accepted for six months

The new law recognizes that, during a public health crisis or state of emergency, access to safety-net supportive services is even more critical. Therefore, a DOC or county facility ID card will be accepted by state, county, and municipal agencies and New Jersey nonprofit organizations for six months from the date of release—a period further extended during a declared public health emergency or state of emergency. The Motor Vehicle Commission is instructed to accept your county correctional facility ID, in addition to a DOC ID, as 2 points for a nondriver ID card.

Repeal of General Assistance drug conviction ban

The law also effectively repeals the drug conviction ban, which prevented those convicted of drug offenses from receiving benefits under the General Assistance WorkFirst New Jersey program. This means that if you had a drug conviction that prevented you from obtaining benefits, you may now be eligible for WorkFirst New Jersey’s employment and training services, substance abuse programs, and mental health services.

Establishment of county reentry coordinator program

The new law calls for the appointment of a reentry coordinator in each county, to evaluate the needs of and help coordinate treatment and services for every inmate in a New Jersey county correctional facility. This position will also help develop peer counseling programs and keep records for measuring effectiveness of the new law. If you are returning home, you may now use the address of a reentry organization as a mailing address in applications for Medicaid, SNAP, and WFNJ, if needed.

For too long, individuals reentering their communities after serving their sentences have been without access to safety net assistance. We hope this new law helps more people as they transition from state and local facilities in New Jersey.
On May 11, 2021, Governor Murphy signed into law a bill that makes it unlawful for occupational and professional licensing boards to discriminate against applicants and licensees on the basis of criminal records. The new law requires professional and occupational licensing boards under the Division of Consumer Affairs and other state agencies to consider whether a person’s offense has a “direct and substantial” relationship to the activity regulated by the board or is inconsistent with public safety.

Previously, a board was permitted to suspend, revoke, refuse to issue, or refuse to admit a person to an examination for any certificate, registration, or license if they had been convicted of or engaged in acts considered a crime or offense of “moral turpitude” or “relating adversely” to the activity regulated by the board.

Under the new law, licensing boards are required to make an individual determination whether to disqualify an applicant due to a conviction. The board must consider the nature and seriousness of the offense, including time passed since the conduct; the relationship of the crime or offense to the purposes of regulating the profession or occupation; any evidence of the person’s rehabilitation since the prior conviction; and the relationship of the crime or offense to the ability, capacity, and fitness required to perform the duties and responsibilities of the occupation.

If you are an applicant, the licensing board must also provide you with written notice or “preliminary determination” of a disqualifying conviction, which explains how the crime or offense relates to the regulated activity; or why the certification, registration, or licensure would be inconsistent with public health, safety, or welfare.

If you are denied a license after a hearing, you must be notified in writing of the grounds and reasons for the denial or disqualification, and the earliest date you can reapply. Additional evidence of rehabilitation may be considered at that time.

Murder and any sex offense that requires registration carries an automatic presumption that there is a direct relationship to the activity regulated by the board. Also, if you were convicted of embezzlement, fraud, or crimes involving public corruption or theft within the past five years preceding the application, you may be denied licensure by the Division of Local Government Services in the Department of Community Affairs.

A full list of state agencies covered under this law is included in the online version of this article, “Occupational and Professional Licensing Boards Cannot Discriminate Against Applicants With Conviction Records,” www.lsnjlaw.org/Criminal-Charges-and-Convictions/Prisoner-Reentry/Employment/Pages/Cannot-Discriminate-Conviction-Records.aspx.

The new law takes effect August 9, 2021.
Expanded Expungement Relief Helps Decriminalize Addiction

On January 18, 2022, Governor Murphy signed into law two bills intended to provide relief to certain individuals with drug-related offenses and expand expungement eligibility. The bills make significant steps toward the decriminalization of addiction.

**P.L.2021, c.403** downgrades certain drug-related convictions for purposes of expungement. Convictions for possession with intent to use drug paraphernalia under N.J.S.A. 2C:36-2, when the paraphernalia is a hypodermic syringe or needle; or possession with the intent to distribute drug paraphernalia under N.J.S.A. 2C:36-3 will not be considered convictions. Convictions for unlawful distribution or manufacturing with intent to distribute; drug paraphernalia in violation of N.J.S.A. 2C:36-3, when the paraphernalia is a hypodermic syringe or needle; or an equivalent crime involving a syringe or needle, will not be considered indictable convictions, but will be considered as a disorderly person offense.

**P.L.2021, c.403** also removes the bar to expunging convictions in certain cases where there has been a previous expungement, including:

- Possession with intent to use a hypodermic syringe or needle under N.J.S.A. 2C:36-2;
- Possession with intent to distribute hypodermic syringes or needle offenses under N.J.S.A. 2C:36-3; and
- Possession or distribution of a hypodermic syringe or needle pursuant to N.J.S.A. 2C:36-6.

Otherwise, a previous expungement of a conviction can, in many circumstances, prevent an expungement for other convictions.

Additionally, this law makes legal the use or possession with intent to use a hypodermic syringe or needle for the personal use of a controlled substance.

**P.L.2021, c.460** expands expungement eligibility for individuals who have successfully completed special probation (“drug court”). Typically, applicants are not eligible for a drug court expungement if they have a “nonexpungeable” conviction. This law allows those who were convicted of nonviolent endangering the welfare of a child offenses, under N.J.S.A. 2C:24-4a(2)—a “nonexpungeable” conviction—the ability to expunge their record in certain circumstances. Those who have such a conviction may be eligible for a drug-court expungement, if:

- They have no other conviction for a “nonexpungeable” offense;
- At least 10 years have passed since their successful discharge from drug court;
- There have been no criminal convictions or offenses since the discharge and there are no pending charges; and
- The court determines the offense is nonviolent based on the prosecutor’s review of the facts. Violent acts that would preclude relief would include any act of “abuse” or “cruelty” as defined in relevant sections of R.S. 9:6-1, or any act resulting in an “abused or neglected child” as defined in relevant paragraphs of N.J.S.A. 9:6-8.21.

Both new laws are effective immediately. ▲
Amendments to a New Jersey law were unanimously passed by both houses of the New Jersey Legislature and signed into law by the governor in January. These changes will help survivors make new lives for themselves after the ordeal of being trafficked. The amended law will become effective in May.

Before the new law was passed, there was a New Jersey law that allowed for human trafficking victims who were arrested and convicted of prostitution, prostitution-related or similar offenses while being trafficked, to vacate and expunge (clear) their arrests, complaints, convictions, and DNA records associated with these violations. Vacating and expunging a criminal record has the effect of the arrest and conviction never having occurred. The records are removed from the criminal record check or what is commonly referred to as the “rap sheet,” and they are physically removed and kept separate from the files of any law enforcement agency or court that possessed them. The problem with that law was that it only applied to prostitution-related offenses. Traffickers often force their victims to commit other crimes such as drug offenses, theft offenses, forgery, fraud, and providing or creating false identities.

The bill just signed into law expands the list of crimes to cover most other crimes with the exception of the most serious ones, such as homicide, kidnapping, luring or enticing a child, and sexual assault. These amendments will more fully allow survivors to gain a fresh start and open avenues for jobs, housing, and public benefits.
**NJ Courts Launch Electronic Filing System for Expungements**

The New Jersey Courts recently announced the statewide launch of the eCourts Expungement System, developed in accordance with recent amendments in the law to help increase efficiency in the expungement process. See N.J.S.A. 2C:52-10.1. The new system allows attorneys and pro se petitioners (those representing themselves) to create and file petitions for traditional, clean slate, and cannabis-related expungements. It also provides helpful new features including accessibility of state records databases, document creation for expungement petitions, and automatic service of applications on numerous parties.

Pro se users can create an account through the New Jersey Court’s Self-Help Center (“Submit Expungement Petition Online” under “COVID-19 Self-Help Resources”). Attorneys can access the system through eCourts.

Users can enter a municipal or superior court case number, and the expungement system will search and pull the petitioner’s court records from criminal, municipal, and family court databases. Petitioners can enter additional information not captured by the expungement system database; review and upload additional or supportive documents; and select or deselect which cases should be included on the proposed final order.

Once the petition is submitted and verified by the petitioner, the system will automatically create an order for hearing and serve the necessary parties with the documentation. It will also serve those parties if a final order of expungement is entered, and will provide a copy of the order to the petitioner.

The expungement system does not provide eligibility advice or inform users whether particular cases or any application is eligible for expungement. Users should consult with attorneys or advocates as to their eligibility prior to using the system, or use other eligibility resources such as LSNJ’s CYRO eligibility interview. After filing, the prosecutor’s office will continue to be responsible for review of the petitioner’s application and to confirm eligibility, and will object if it determines an application ineligible for expungement.

The expungement system should now be easier for those who have access to computers and the internet. Previously, petitioners, even those who were filing through the JEDS system, were required to file several copies of their written or typed expungement applications and then serve copies on many other parties via certified mail, with return receipt requested, at a substantial cost. The court will still accept paper expungement applications, important for those without access to a computer or the internet.

User guides are available on the Court’s website. LSNJ’s eligibility tools and resources are available at www.lsnjlaw.org.

**Guide to NJ’s Electronic Filing System for Expungements**

If you are filing an expungement through New Jersey’s new electronic filing system, Legal Services of New Jersey’s new guide can help. Check our website for “Electronic Filing for Expungement: Pro Se Guide.”

Before filing your petition through the new electronic filing expungement system, you should find out if you are eligible for expungement. The guide provides resources to help you find out if you are eligible. It also will show you where to file and what you will need to use the system.

To start an expungement petition in the new system, enter one of your case numbers. The guide will help you find your case number by directing you to public databases where you can find this and other information related to your cases. You may also need this information if you have additional arrests or convictions not found by the electronic expungement system search tool. The guide is available at www.lsnjlaw.org/Publications/Pages-Manuals/Electronic-Filing-Expungements.pdf.
Expunging Marijuana-Related Convictions: A Guide to Eligibility and Resources

Under recent reforms to New Jersey law, people with past convictions for most marijuana-related offenses are eligible for expedited expungement. This article provides helpful information to determine if you are eligible for relief and where to get assistance.

If you have any of the marijuana-related convictions listed below, there is no waiting period for expungement. You are eligible for immediate relief after the payment of any fine, the completion of probation or parole, or release from incarceration, legal custody, or supervision, if applicable, whichever comes latest:

- Distribution or possession of, or having under one’s control with intent to distribute, less than one ounce of marijuana, or less than five grams of hashish in violation of N.J.S.A. 2C:35-5b(12), or such violation and a school zone or public housing violation under N.J.S.A. 2C:35-7a or N.J.S.A. 2C:35-7.1a (i.e., distributing, or possessing, or having under one’s control with intent to distribute, on or within 1,000 feet of any school property, or within 500 feet of a public housing facility, public park or public building); or
- Obtaining, possessing, using, being under the influence of, or failing to make lawful disposition of marijuana or hashish in violation of N.J.S.A. 2C:35-10a(3), N.J.S.A. 2C:35-10a(4) or N.J.S.A. 2C:35-10b or N.J.S.A. 2C:35-10c; or
- A violation involving marijuana or hashish as above, and using or possessing with intent to use drug paraphernalia in violation of N.J.S.A. 2C:36-2.

If you have a conviction for distribution of one ounce or more but less than five pounds of marijuana, or over five grams but less than one pound of hashish in violation of N.J.S.A. 2C:35-5(11), the conviction will be expungeable after a three-year waiting period.

The court is currently developing an electronic system to automatically expunge these marijuana-related arrests and convictions, however, if you have other charges that are not subject to expedited expungement, those records would remain. In the meantime, you can expunge your marijuana-related and other eligible convictions through the New Jersey Courts electronic filing system (or “Expungement System”), available on their website.

The New Jersey Courts Electronic Filing System

The New Jersey Courts electronic filing system for expungements was designed to improve access and efficiency in the expungement process.

It allows attorneys and those representing themselves to create and file petitions for traditional, clean slate, and marijuana-related expungements. It also provides helpful new features, including easier access to state records databases, document creation for expungement petitions, and automatic service of applications on numerous parties.

Anyone can create an account through...
the New Jersey Court’s Self-Help Center ("Submit Expungement Petition Online" under “COVID-19 Self-Help Resources”).

To get started, you will need to enter a municipal or superior court case number. The system will then search for your court records from criminal, municipal, and family court databases. The system is not guaranteed to return all of your expungeable cases, and therefore it is suggested that you obtain your records prior to starting the process. (See the “Locate Your Records” section of LSNJ’s Clearing Your Record Manual: https://bit.ly/CYRmanual.)

As you complete your expungement petition, you will be able to:

• Enter additional information not captured by the expungement system database;
• Review and upload additional or supportive documents; and
• Select or deselect which cases should be included on the proposed final order.

If necessary, the system will automatically create an order for hearing and serve the necessary parties with the documentation. It will also serve those parties if a final order of expungement is entered, and will provide a copy of the order to the petitioner.

Although general information is provided on the website, it will not inform you as to whether you are eligible for expungement. Therefore, it is suggested that you consult with attorneys or advocates prior to using the system, or use other eligibility resources such as LSNJ’s Clearing Your Record Online eligibility interview.

After you file your expungement petition, the prosecutor’s office will review your petition. The office may object if it determines that you are not eligible for expungement. You will have the opportunity to respond to any objections raised by the prosecutor’s office.

Whether or not you are eligible to expunge your marijuana-related convictions or other arrests and convictions through New Jersey’s new electronic filing system, these recent changes should help make the expungement process easier for you to clear your records and get a fresh start. ▲

Our interactive program can help you figure out if you are eligible for expungement and guide you through the process

The Courts website will not tell you whether you are eligible for expungement. Consult with an attorney or advocate prior to using the system.
The New Jersey Supreme Court has ordered that certain marijuana- and hashish-related cases, in accordance with the Marijuana Decriminalization Law, will be dismissed, vacated, and/or expunged through a new automated process. You do not need to file an expungement to take advantage of this relief. The Court has also established a procedure to find out if your case has been expunged. Here’s what you need to know:

### Which marijuana-related cases are subject to automatic expungement?

The automated process only applies to cases involving the following specific marijuana or hashish offenses, including attempts or conspiracies to commit the following:

- Distribution of less than one ounce of marijuana or less than 5 grams of hashish (fourth degree) N.J.S.A. 2C:35-5(b)(12);
- Possession of more than 50 grams of marijuana or 5 grams or less of hashish (disorderly persons offense) N.J.S.A. 2C:35-10(a)(4).

The following convictions, including attempts or conspiracies, must be in combination with at least one of the above-listed offenses involving marijuana or hashish to be eligible for the automated process:

- Possession of Drug Paraphernalia (disorderly persons offense) N.J.S.A. 2C:36-2;
- Use or Being Under Influence of Controlled Dangerous Substance (CDS) (disorderly persons offense) N.J.S.A. 2C:35-10(b); and
- Failure to Make Lawful Disposition of Controlled Dangerous Substance (disorderly persons offense) N.J.S.A. 2C:35-10(c).

If I have a case involving marijuana- or hashish-related charges and non-marijuana or hashish-related charges, am I still eligible for automated expungement?

If your case included charges that are not marijuana- and hashish-related, and those charges were dismissed, your case will still be eligible for automated expungement. However, if your case resulted in a conviction for an offense that is not marijuana- or hashish-related, your case will not be automatically expunged (although you might still be eligible for an expungement through the traditional “petition-based” process).
How do I know if my marijuana- or hashish-related conviction has been expunged?

You can request a Certification of Expungement from the court, which is proof that your case has been expunged by completing a “Record Request Form for an Individual to Obtain Copies of Their Own Expunged and/or Sealed Records” (www.njcourts.gov/forms/12830_req_def_copies_expunge_sealed_records.pdf). Be sure to check the appropriate box that you are requesting “Certification of Expungement by Supreme Court Order.”

Where do I submit my request?

You will need to deliver it the court where your expungement was granted, conviction occurred, or juvenile adjudication was ordered. If you are unsure about which court handled your case, you can go to your local municipal court, the criminal or family division in any Superior Court courthouse, or the Superior Court Clerk’s Office in Trenton.

What do I need to provide at the time of my request?

In addition to the completed records request form, you must provide a government issued photo identification. This identification card may be a state-issued driver’s license, county identification card with your photo, or a passport. If you are under the age of 18, your parent/guardian must request the expungement certification on your behalf. Record requests submitted by an attorney on behalf of their client do not require photo ID, and may be submitted by email to secoombsman.mbx@njcourts.gov.

Do I need to notify other agencies that my records have been expunged through this process?

You do not. The lists of marijuana- and hashish-related cases subject to automated expungement will be sent to the Attorney General who will share those lists with the New Jersey State Police, county and local law enforcement agencies, and other parties typically notified during the expungement process.

What if the automated process does not effectively expunge my marijuana or hashish-related case?

If your marijuana- or hashish-related case was not captured by the automated process, you may file an individual petition to expunge your records.

If my case has been expunged, do I have to tell my employer or landlord about my previous record?

An automatic expungement will treated as a traditional expungement, therefore the court is required to tell all third parties there is no record. This includes landlords, employers, and other entities that may require a background check.

Can Legal Services Handle My Case?

Legal Services handles civil—not criminal—cases in New Jersey. This includes areas such as housing, health, family, education, and consumer law, to name a few.

Who Qualifies for Legal Services?

To qualify for our services, you need to be screened for income eligibility. Income guidelines vary and some types of income are not counted, so it is best to apply to see if you meet the guidelines.

Visit Our Website – www.lsnjlaw.org

LSNJ’s legal education website can help you find a lawyer or guide you in representing yourself. The site includes legal information and updates in 18 areas of New Jersey civil law, as well as many legal rights publications and videos, and access to legal forms and court processes.