



New Jersey Job Applicants with Criminal Records: Protections Under Federal and New Jersey Fair Credit Reporting Acts

When do the Federal⁴¹ and New Jersey⁴² Fair Credit Reporting Acts Protect Me? FCRA/NJFCRA apply only when the employer requests a background check from a third party “Consumer Reporting Agency.” A background check agency qualifies as a “Consumer Reporting Agency” if it *regularly* produces background checks/and or credit reports.⁴³

Do FCRA/NJFCRA Protect Me if the Employer Obtains a Background Check from the State Police or the FBI? No. Government entities are not “Consumer Reporting Agencies,” and so FCRA would not apply in that situation.

What Are My Rights Under the Federal and New Jersey Fair Credit Reporting Acts?

1. **Written Permission to Run a Background Check:** Before running a background check, an employer *must get written permission* from the applicant.⁴⁴ (FCRA, NJFCRA)
2. **Before Rejecting an Applicant Based on a Background Check,** the employer must provide the employee a copy of the background check and a written description of the applicant’s rights under FCRA.⁴⁵ (FCRA, NJFCRA)
3. **If the Employer Rejects an Applicant Based on the Applicant’s Background Check,** the employer must inform the applicant via oral, written, or electronic notice: (federal FCRA only)
 - That the employer made the decision not to hire the applicant based on the report received from the background check agency*.⁴⁶
 - *However, an employer does *not* need to tell you which arrests or convictions their decision was based on. Also, employers usually request background checks *and* credit checks in one report; if so, they are not required to specify whether your criminal record or your credit score was the reason they did not hire you.
 - That the background check agency did *not* make the decision and is unable to provide the applicant specific reasons why the applicant was not hired.⁴⁷
 - Of the name, address, and phone number of the agency that provided the background check to the employer.⁴⁸
 - That the applicant has the right:
 1. To obtain a free copy of the background check from the background check agency within 60 days.⁴⁹
 2. To dispute inaccurate information in the background check with the background check agency.⁵⁰
4. **Information That May Not Be Reported in a Background Check** (federal FCRA only)
 - If you are applying for a position where the annual salary may reasonably be expected to equal \$75,000 or less, the background check company may not report or disclose arrests or charges not ending in conviction more than 7 years old.⁵¹
5. **If the Background Check is Inaccurate or Incomplete** (FCRA, NJFCRA)
 - Contact the background check agency and tell them you want to file a dispute⁵² and provide them with documentation that the record is inaccurate.⁵³
 - The agency will then have 30 days (subject to one extension of 15 days⁵⁴) to (1) conduct a reasonable reinvestigation to determine whether the disputed information is inaccurate and (2) update its file accordingly.⁵⁵
 - Within 5 business days of completing the investigation, the agency must notify you of the result.⁵⁶
 - If the agency does not resolve the dispute in your favor, you have the right to file a brief “statement of dispute” with the agency.⁵⁷ Unless the agency determines the dispute was frivolous or irrelevant, the agency must clearly note in any subsequent background check it produces that the particular item is disputed by you, and include either your “statement of dispute” or a summary of your statement.⁵⁸

How Do I Enforce My Rights Under the Federal and New Jersey Fair Credit Reporting Acts?

If your rights under FCRA were violated, the best way to enforce your rights is to file a civil suit in state or federal court.⁵⁹ There are both state and federal government agencies that enforce the FCRA, and with which you can file a complaint, but they often look for *patterns of violations* rather than enforcing individual rights.

What Government Agencies Enforce the Federal and New Jersey Fair Credit Reporting Acts? The Federal Trade Commission (FTC) enforces FCRA⁶⁰ and the New Jersey Division of Consumer Affairs (DCA) enforces NJFCRA.⁶¹

How Do I File a Complaint with the Federal Trade Commission?

- **Telephone:** 877-382-4357 (voice) or 866-653-4261 (TTY)
- **Internet:** <https://www.ftccomplaintassistant.gov/>
 - On the left side of the page, under “Select a Category Below,” select “Other”
 - On the right side of the page, select “Click here for more options”
 - Click “NO MATCH FOUND.”
 - In response to “How were you contacted?”, click “Other/Not Applicable”
 - On the right side of the page click “Continue”
 - On the page for “Complaint Detail Information,” fill out Company Representative First Name, Last Name, and Title/Position. Leave the other fields blank.
 - Fill out the Company Details and Your Information on the next two pages
 - In the “Comments” box, type a detailed description of the complaint. Possible complaints include:
 - *The employer ran my background check without my permission.*
 - *The employer did not provide me with a copy of my background check or my rights **before** telling me I would not be hired.*
 - *The employer did not provide me with the contact information for the background check agency.*
 - *The employer did not notify me of my right to dispute inaccurate information with background check agency.*
 - *The background check agency produced a background report that includes a 7-year-old charge for which I was not convicted.*
 - *The background check agency produced a background report that had errors.*
 - *The background check agency refused to fix the errors on the background report*
 - Click “Continue”
 - Click “Submit”
- **For More Information:** <http://www.consumer.ftc.gov/articles/pdf-0044-background-checks.pdf>

How Do I File a Complaint with the New Jersey Division of Consumer Affairs?

➤ **By Mail or Fax:**

- Download the DCA General Complaint Form: https://www20.state.nj.us/lps/LPSCA_COMPL/docs/ocp.pdf
 - Determine whether it was the employer or the background check agency that violated your rights.
 - Fill out your personal information and the information of the company you are filing the complaint against. If both the background check agency and the employer violated your rights, fill out a separate complaint form for each.
 - For Question 1, “Nature of Complaint,” check “Other” and write “New Jersey Fair Credit Reporting Act”
 - Ignore Question 2 regarding Motor Vehicles, but complete Questions 3 and 4.
 - For Question 5, provide a detailed description of the complaint, as described in the FTC section above.
- **Mail** your completed claim form to:
 - Division of Consumer Affairs
 - P.O. Box 45025
 - Newark, NJ 07101
- **Fax** your completed claim form to: 973-648-6908