



Equal Housing Opportunity

NATIONAL BLUEPRINT FOR REENTRY^{2nd ed.}

Recommendations to promote the successful reentry of
individuals with criminal records through housing

Legal Action Center
National H.I.R.E. Network
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National Blueprint for Reentry: Equal Opportunity Housing for People with Criminal Histories

The National H.I.R.E. Network aims to increase and improve the number and quality of job opportunities available to people with criminal records. However, in order for labor market participants — working people and those who are looking for work — to be successful and consistently competitive they must have a place to live, particularly individuals who have been involved in the criminal justice system. Many jurisdictions in their plight to reduce recidivism and improve employment outcomes for justice-involved individuals continue to struggle to ensure formerly incarcerated individuals have adequate (i.e. safe, habitable, affordable, drug free, crime free and permanent) housing.

Recent data reports over 600,000 people will return to communities from prisons and jails.¹ A snapshot of the correctional population in the United States at yearend 2012 reveals that 6.9 million individuals were under correctional supervision in the U.S. at that time, including 2.23 million people in prisons and jails.² And if anything, these numbers minimize the scope of nationwide justice-involvement when you consider that in a given year as many as 12 million individuals pass through our nation's local jails alone.³ That's more than 3.5% of the entire population cycling just through our local jails each year. And over 95% of those individuals who do get incarcerated will eventually return to our communities.⁴ Whether these individuals remain crime free and become productive and contributing members of their communities depends in large part on their ability to legally meet their most basic needs, including the need to secure safe and reliable shelter.

When formerly incarcerated individuals are homeless upon release, many of these individuals confront barriers that prevent them from accessing safe and stable housing that could help form the foundation of a new, more positive lifestyle. Housing opportunities are often limited when a person with a criminal history and their family seek permanent housing in the private and public housing markets for three reasons. First, many of these individuals are returning to low-income households or are single and unemployed. Second, in the majority of state and local jurisdictions criminal record-based restrictions and discrimination by landlords are permitted unless the restrictions are based on race, color, religion, national origin, sex, disability, or familial status as prohibited by the Fair Housing Act of 1968. Finally, state and federal statutes and regulations may create additional barriers even when there are community providers that seek to provide housing supports to help individuals through transitional/temporary housing programs.

A number of studies have shown that when individuals in reentry have stable housing they are significantly less likely to recidivate and that providing housing opportunities

for people in reentry, especially those with serious behavioral healthcare needs, saves money by reducing shelter, correctional, emergency room, and other costs to the public.⁵ With five-year re-arrest rates hovering around 75% for individuals recently released from state prisons⁶, it's critical that governments at all levels do everything they can to reduce recidivism and the social and fiscal costs associated with it.

Tenant screening policies and practices used by private landlords to review applications and determine whether to offer an applicant a property for rental often include a criminal background check, and many landlords unfairly discriminate against tenants seeking rental housing based on criminal history information that is unrelated to the safety of neighbors, their ability to be good tenants, or ability to pay. Across the country, landlords are able to set their own screening criteria and most will have flat bans against leasing to individuals convicted of a felony or other offense without any individualized assessment of risk or threat of safety or consideration of evidence of rehabilitation. Many landlords will have no training or understanding of how to review criminal record information, much less on obtaining relevant information that may signal rehabilitation and potential to be a good tenant. These policies and practices make it more difficult for people with criminal records and their families to find suitable housing.

Moreover, federal laws and Department of Housing and Urban Development (HUD) regulations create legal and policy barriers for people with criminal records. Although federal law contains only two permanent exclusions for individuals with criminal records from public or federally assisted housing, in most cases Public Housing Authorities (PHAs) and landlords possess broad discretion to determine a person or family's suitability for such housing. In many cases, housing authorities and landlords have used this discretion to broadly exclude people with criminal records and their families from receiving federal housing support.

In 2011, the Secretary of Housing and Urban Development issued letters to all Public Housing Authorities and private owners of federally assisted rental properties to encourage them to use their discretion to give otherwise qualified people with criminal records and their families housing and to avoid evicting them when doing so will not pose an unreasonable risk to the community². Much more could be done.

This second edition of the National H.I.R.E. Network National Blueprint for Reentry offers legislative and executive policy recommendations for the United States to reinforce its commitment to giving people a second chance, restoring families and communities, and decreasing the recidivism rates of people with criminal records by modifying housing policies and programs to better support reentry.

Recommendations

Issue federal guidance for private landlords on the appropriate and fair use of criminal history information in tenant screening.

The U.S. Department of Housing and Urban Development's (HUD) Office of Fair Housing and Equal Opportunity should issue guidance similar to the Equal Employment Opportunity Commission's criminal records guidance released in 2012 to promote the fair use of criminal history information for housing purposes and identify the circumstances under which housing discrimination based on a criminal record might violate the Fair Housing Act and prompt enforcement activities against a housing authority or landlord.

Provide additional protections for individuals with criminal records seeking public or federally assisted housing.

Congress should pass legislation or HUD should promulgate regulations:

- Requiring that housing authorities and owners of federally assisted housing put in writing their admissions standards for people with criminal records and histories of illegal drug use or alcohol abuse. These policies should be made available to any individual requesting them.
- Prohibiting housing authorities and landlords receiving HUD subsidies from adopting policies that disqualify all individuals with criminal records or all individuals with felony convictions, without an individualized assessment of the nature and seriousness of the particular offense, the amount of time since it occurred, and evidence of rehabilitation.
- Requiring housing authorities and owners of federally assisted housing to provide all applicants, at the time they receive an application, with a summary statement of the screening policies and applications procedures being used so the applicant will understand:
 - The policies and criteria that will be used to select tenants; and
 - The applicants' rights in the event that their application is rejected, including their right to receive notice of the specific reasons for the rejection, their right to informally appeal the decision with the owner or housing authority, and any appeal rights they have with an oversight agency.
- Providing a right to appeal to an outside agency a housing authority or owner's decision to reject an applicant based on a criminal record or history of illegal drug use or alcohol abuse. The regulation should specify the agency to which an appeal should be made as well as the basic procedural requirements of the appeal and require housing authorities and owners to provide this information in writing to rejected applicants.

Pass legislation or amend federal regulations so that an individual or family can be evicted for criminal activity only if the individual or family member has been convicted of a crime.

Currently, federal regulations permit a property owner to evict a tenant in federally-assisted housing for criminal activity even if the tenant or member of the tenant's family has not been convicted or even arrested for the suspected criminal activity. Congress should pass legislation or HUD should amend its regulations at 24 C.F.R. §§5.861 and 982.310 to permit evictions from federally-assisted housing based on criminal activity only when the tenant or family member has been convicted of a crime.

Recommendations

Set reasonable time limits for the consideration of criminal history information by housing authorities and owners of federally-assisted housing.

Federal laws and regulations permit or require housing authorities and owners of federally assisted housing to consider criminal history information that in many cases is quite old. These policies can make it difficult for people and their families to obtain suitable and stable housing long after they've paid their debt to society.

Congress should amend 42 U.S.C. §13661(a) so that the duration of the ban on admitting individuals to public housing after they've been evicted for drug-related criminal activity is reduced to one or two years and so that current participation in drug treatment or completion of a program warrant a waiver of this exclusion. Congress should also amend 42 U.S.C. §13661(c) to set a maximum limit for the "reasonable time" during which an individual's criminal activity may be considered under that subsection to 1 year or less, at the owner or housing authority's discretion.

More broadly, Congress should amend federal law to provide maximum time limitations on the durations of statutory restrictions on an individual's or household's eligibility for public or federally assisted housing. In no case should an individual or household be restricted from public housing as a result of a criminal history after the later of seven years from the date of the most recent relevant conviction or five years from the most recent release from incarceration, though for most offenses these time limits should be much shorter. With respect to the majority of statutory provisions which provide housing authorities and owners of federally assisted housing with discretion to admit, deny, evict, or retain tenants, Congress should set maximum time limitations for considering criminal history information and maintain the PHAs' and owners' discretion to reduce those time periods but not to exceed them.

HUD should amend 24 C.F.R. §5.855, its interpretation of 42 U.S.C. §13661(c)'s "reasonable time" during which an owner or PHA may consider an individual's criminal activity, so that it sets a maximum length of time (i.e., one year), and housing authorities and owners of federally assisted housing should have discretion only to reduce the time that they consider "reasonable" before admitting an individual to housing. HUD should also amend 24 C.F.R. §§960.203(c)(3) and §5.854 so that owners of federally assisted housing and PHAs are prohibited from denying admission to an individual or family beyond the three-year bar created by 42 U.S.C. §13661(a).

Provide a mechanism for excluded individuals or households to obtain a waiver from or exception to their exclusion from public or federally assisted housing.

Federal laws and regulations that create barriers to public and federally assisted housing based on criminal history information do not provide an opportunity for people to demonstrate that they are suitable tenants for public or federally assisted housing despite their past. Congress should enact legislation creating a process for individuals and families to receive a waiver from criminal record-based exclusions from public and federally assisted housing. Such a waiver should be based on the nature and seriousness of the conduct prompting the exclusion, the relationship the conduct has to the safety and well-being of others in the public housing and surrounding community, the length of time since the conduct was last engaged in, and any evidence suggesting the conduct will not recur.

Require housing authorities and owners of federally-assisted housing to consider evidence of rehabilitation when making admission or eviction decisions based on drug-related or other criminal history information.

HUD should modify 24 C.F.R. §§5.854(b), 960.204(a)(2), and 982.553(a)(1)(ii) so that housing authorities and owners of federally assisted housing are required to consider evidence of rehabilitation, including participation in or completion of treatment, the nature and seriousness of the conduct and the time elapsed since it occurred, and participation or willingness to participate in other appropriate social or counseling services and the availability of such services when considering drug-related or other criminal

Recommendations

activity in making admission or eviction decisions. Such a policy change would not only expand housing opportunities for people with criminal records, but also encourage people to get the treatment they need, reduce the stigma associated with addiction and mental health treatment, and treat people individually and holistically, rather than summarily and simplistically.

Ensure individuals leaving prisons and jails are eligible for homeless services if they need them.

Current HUD regulations do not permit an individual to immediately receive homeless services if they have no home to return to after being incarcerated for more than 90 days. HUD should amend 24 C.F.R. §91.5 so that the definition of homeless includes individuals leaving prisons or jails who were homeless prior to their incarceration regardless of the length of their incarceration.

Endnotes

¹ E. Ann Carson and Daniela Golinelli, Prisoners in 2012: Trends in Admissions and Releases 1991-2012. U.S. Bureau of Justice Statistics (De. 2013), available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4842>

² Lauren E. Glaze and Erinn J. Herberman, Ph.D., Correctional Populations in the United States, 2012. U.S. Bureau of Justice Statistics (Dec. 2013) at 1, Appendix 1, available at <http://www.bjs.gov/content/pub/pdf/cpus12.pdf>

³ Todd Minton and Daniela Golinelli, Ph.D., Jail Inmates at Midyear 2013-Statistical Tables. U.S. Bureau of Justice Statistics (May 2014) at 2, available at <http://www.bjs.gov/content/pub/pdf/jim13st.pdf>

⁴ Timothy Hughes and Doris James Wilson, Reentry Trends in the United States: Inmates returning to the community after serving time in prison. U.S. Bureau of Justice Statistics (2002) at 1, available at <http://www.bjs.gov/content/pub/pdf/reentry.pdf>

⁵ For a discussion of these studies, see, e.g., Diana T. Myers and Associates, Inc., Housing and the Sequential Intercept Model: A How-to Guide for Planning for the Housing Needs of Individuals with Justice Involvement and Mental Illness. Pennsylvania Office of Mental Health and Substance Abuse Services (2010) at 6-9, available at <http://csgjusticecenter.org/wp-content/uploads/2014/07/Housing-and-the-Sequential-Intercept-Model.pdf>

⁶ Matthew R. Durose, Alexia D. Cooper, Ph.D., and Howard N. Snyder, Ph.D., Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010. U.S. Bureau of Justice Statistics (April 2014) at 1, available at <http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>.

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The **Legal Action Center** is the only nonprofit law and policy organization in the United States whose sole mission is to fight discrimination against people with histories of alcohol and drug dependence, HIV/AIDS, or criminal records, and to advocate for sound public policies in these areas.

Established by the Legal Action Center, the **National H.I.R.E. Network's** mission to increase the number and quality of job opportunities available to people with criminal records by improving employment practices and public policies, and changing public opinion.

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