

Housing Series:

Finding Housing for People with Criminal Histories

Bonnie Millstein

All types of housing must comply with civil rights laws and provide reasonable accommodations for applicants and tenants with disabilities. Applicants with criminal histories can also make requests for reasonable accommodations. When appropriate, a request may result in admission to housing or withdrawal of eviction proceedings.

Property owners often point to convictions resulting from mental illness or drug addiction to prevent applicants from gaining admission into housing. Civil rights laws do not allow such blanket prohibitions and instead require individual assessments. One way of obtaining such an assessment is through a request for reasonable accommodation. Housing providers would then be required to verify that applicants are in recovery both from mental illness as well as drug and alcohol addiction. The provider must conduct an individualized assessment based on reliable objective evidence. Of course, a housing provider may reject any applicant who poses a direct threat to the health or safety of other individuals or their property, but the housing provider must first determine if reasonable accommodation can eliminate or significantly reduce the threat.

Information about reasonable accommodations and direct threats is widely available. One resource is the

U.S. Department of Housing and Urban Development (HUD) and U.S. Department of Justice *Joint Statement on Reasonable Accommodations under the Fair Housing Act* (http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf).

Types of Housing

Public Housing

Federal law gives Public Housing Agencies (PHAs) broad discretion to reject or accept anyone with a criminal record for most crimes. There are, however, some specific stipulations. For example, Federal law prohibits PHAs permanently from giving Section 8 vouchers or public housing apartments to:

- People convicted of the manufacture of methamphetamines on public housing premises.
- Sex offenders and individuals with a State sex offender lifetime registration requirement.

Additionally, PHAs may not house any member of a family for 3 years if one household member was evicted from public housing because of drug-related crimes. A PHA can shorten the 3-year period if the ex-offender completes an approved rehabilitation program.

A PHA can also reject applicants or terminate leases when a tenant or a member of the tenant's family:

- Is convicted of a crime.
- Has engaged in any drug-related criminal activity.
- Has engaged in any violent criminal activity, or in any other criminal activity that would affect other tenants' health, safety, or right to peaceful enjoyment of the premises.

For applicants, the criminal activity must have occurred "a reasonable time" before the person applies for housing. The policies listed above may apply in public housing whether or not the tenant knew of the crime and whether or not the crime was committed on PHA property.

It is possible to convince PHA and subsidized housing providers to make decisions in favor of the tenant. It is a requirement that PHAs consider "mitigating circumstances" when they make the decision to admit or evict a tenant with a criminal history. For applicants and tenants with disabilities, the agency must consider the impact of the disability, as well as evidence of the family's participation in or willingness to participate in social service or counseling programs. A good resource describing the facts that might convince a housing provider not to evict a current tenant is *Wait a Minute: Slowing Down Criminal-Activity Eviction Cases to Find the Truth* (<http://povertylaw.homestead.com/waitaminute.html>).

McKinney-Vento Supportive Housing Programs

Under the McKinney-Vento Homeless Assistance Act, HUD administers several supportive housing programs:

- The Supportive Housing Program (SHP) develops housing and related supportive services for people transitioning from homelessness to independent living.
- Shelter Plus Care (S+C) provides rental assistance through a variety of permanent housing choices matched to the value of supportive services, such as

mental health and substance use treatment, which are made available to participants.

For consumers with criminal histories, these programs:

- Must consider applications for reasonable accommodations in the case of disabled applicants and tenants.
- May exclude applicants who were not homeless before their convictions.
- May exclude applicants with criminal histories if the funding source requires it.
- Must reject applicants convicted of sex offenses and applicants registered as lifetime sex offenders.

Halfway and Transitional Housing

A halfway house is a residence that offers individuals the opportunity to reintegrate into society. Halfway houses serve individuals recovering from substance use, mental illness, or recently released from prison. Such housing is often highly subsidized. Transitional housing provides a subsidized residence for both individuals and families who are in the process of transitioning from homelessness to supportive permanent housing or independent housing in a community. Transitional housing can:

- Target applicants just released from prison.
- Provide a highly supervised environment.
- Emphasize behavioral change, staying drug-free, and compliance with other conditions.

Low Income Tax Credit Properties and Rural Development Housing

Owners of these types of properties may, but are not required to, prevent applicants with criminal histories (including lifetime registered sex offenders) from applying.

Private Housing Providers

Private housing providers may accept or reject any applicant because of a criminal history. However, they may

not reject or evict applicants and tenants with disabilities solely on the basis of disability, including histories of drug abuse. The Fair Housing Act does not protect individuals who currently abuse controlled substances.

Related Federal Law

Fair Housing Act

The law is available on the HUD website (<http://www.hud.gov/offices/fheo/FHLaws/>). A link is also available on the same web page for HUD's Fair Housing Act regulations, which explain the law and provide examples of its application.

Americans with Disabilities Act

The text of the law and several documents explaining how the law applies are available on the Federal government's Americans with Disabilities Act (ADA) web page (<http://www.ada.gov>). The ADA defines "handicap" to include "someone who has successfully completed a drug rehabilitation program, is currently in such a program, or is mistakenly regarded as engaging in illegal drug use." Like the Fair Housing Act, the ADA does not treat individuals who currently abuse controlled substances as "handicapped."

Section 504 of the Rehabilitation Act

The five-line law and the more extensive regulations are available on HUD's website (<http://www.hud.gov/offices/fheo/FHLaws/>). Section 504 of the Rehabilitation Act preceded the Fair Housing Act and the ADA in its application to housing for individuals with disabilities. Unlike the Fair Housing Act and the ADA, Section 504 applies only to recipients of Federal financial assistance, such as those who receive construction funds and project-based rental subsidies. Section 504 introduced the requirement that recipients provide reasonable accommodations and modifications to Federal program beneficiaries. The Fair Housing Act and the ADA expanded the concept to apply to private housing providers not receiving any Federal assistance.

Recidivism Reduction and Second Chance Act

This Act provides information to individuals incarcer-

ated in Federal prison regarding health, employment, personal finance, release requirements, and community resources. It also established a national resource center to disseminate best practices for reentry. Finally, the Act authorizes the Department of Justice to conduct reentry-related research.

This Act funds:

- Demonstration grants for States to promote successful reintegration by funding housing, employment services, substance use treatment, and other services.
- Grants to nonprofits for mentoring and transitional services.
- Grants to improve availability of drug treatment for people in juvenile facilities, jails, and prisons.
- Grants to States, local governments, and Indian tribes to develop family-based programs for incarcerated parents of minor children.

Selected Resources

The National Housing Law Project's *An Affordable Home on Re-entry: Federally Assisted Housing and Previously Incarcerated Individuals*, (<http://www.nhlp.org/files/01%20Re-entry%20zip%207.09.zip>) provides detailed information about the law. "The Guide describes the current state of the law with respect to the admission process in general, and more specifically, as it relates to individuals with criminal records who have also been incarcerated; the barriers these individuals face as they seek housing; the process by which to challenge a denial; and suggestions as to how local advocates who are working with clients with criminal records may begin to change local policies and practices" (2008, p. 1).

The Council of State Governments created the **Justice Center of The Council of State Governments** (<http://www.reentrypolicy.org>) in 2006. The Justice Center is a non-partisan resource for data-driven practices in areas in which the criminal justice system intersects with housing, race, public health, and other disciplines.

The Legal Action Center (<http://www.lac.org>) is the

only nonprofit law and policy organization in the United States whose sole mission is to fight discrimination against people with histories of addiction, HIV/AIDS, or criminal records, and to advocate for sound public policies in these areas. The Legal Action Center published guidance for public housing providers called *Safe at Home* (<http://www.lac.org/index.php/lac/132>). This guidebook explains what the Federal housing laws require, highlights those areas where PHAs have discretion to craft their own admission and eviction policies related to people with criminal records, and offers recommendations on effective ways to use that discretion to simultaneously meet important public safety goals and the housing needs of people with criminal records.

The Legal Action Center also published *Improving Housing Opportunities for Individuals with Conviction Records* (<http://www.lac.org/toolkits/housing/housing.htm>). This toolkit explains how to work with public and private landlords regarding applicants with criminal records. It promotes the use of model housing policies and describes how to use a variety of tools to help increase housing opportunities. The toolkit addresses various topics:

- Convincing housing providers to assess each applicant individually.
- Advocacy strategies for laws prohibiting housing discrimination against people with criminal records.
- Using certificates of rehabilitation.
- Fair Housing claims.
- Stopping inquiries about arrests that never led to convictions.
- Sealing/expunging criminal records.

New York State Judicial Institute

The Current State of Offender Reentry and the Collateral Consequences of Criminal Convictions, Making America “*The Land of Second Chances*”: *Restoring Economic Rights for Ex-Offenders*, (<http://www.courts.state.ny.us/ip/partnersinjustice/Second-Chances.pdf>) pro-

vides a national review of the history and law of barriers faced by individuals with criminal histories. The article includes practices, policies, and solutions to eliminate barriers.

About the Housing Series: Access to affordable housing is essential to prevent and end homelessness. Locating housing resources is a daunting task, even without the stereotypes and generalizations that result in discrimination against people experiencing homelessness and mental illness. PATH providers know firsthand the scarcity of housing for individuals with limited incomes. To assist PATH providers in finding affordable housing, the PATH Technical Assistance Center created the Housing Series. The Housing Series consists of information, resources, and tools to help providers obtain housing for the people with whom they work. The Housing Series is available on the PATH website (<http://pathprogram.samhsa.gov>) under “Topics.” Additional resources and tools will be added periodically. Please send comments on the Housing Series and suggestions for additional resources to path@samhsa.hhs.gov.