

Use of Arrest Records for Public Housing Agencies and Owners of Federally-Assisted Housing

Racial disparities in arrests, convictions and sentencing have led to the overrepresentation of people of color in the criminal justice system. Denying housing or evicting individuals with criminal records disproportionately impacts communities of color and may be a violation of the Fair Housing Act.

Criminal conviction brings with it a host of sanctions that can make it difficult for individuals trying to re-enter society and be productive members of our community. Collateral consequences that affect an individual's ability to secure housing, employment, public benefits, students loans, etc. tend to last indefinitely, long after an individual is fully rehabilitated. About 100 million (nearly 1 in 3) Americans have a criminal record. HUD, along with other federal agencies aims to provide second chances to formerly incarcerated individuals and ensure that individuals are not denied access to HUD-subsidized housing on the basis of unreliable evidence of past criminal conduct.

Does HUD Require that PHAs and owners adopt or enforce “one-strike” rules that deny admission to anyone with a criminal record or require eviction any time a household member engages in criminal activity?

No. In most cases, PHAs and owners have discretion to decide whether or not to deny admission to an applicant with certain types of criminal history, or terminate assistance or evict a household if a tenant, household member, or guest engages in certain drug-related or other criminal activity on or off the premises (in the case of public housing) or on or near the premises (in the case of Section 8 programs).

In deciding whether to admit or retain an individual that has engaged in criminal activity what factors should PHAs and owners consider?

PHAs and owners may consider all of the circumstances relevant to the particular admission or eviction decision, including but not limited to:

- the seriousness of the offending action;
- the length of time since the conviction;
- the number of convictions that appear on the applicant's criminal history;
- whether the applicant's offense bears a relationship to the safety and security of other residents;
- the effect that eviction of the entire household would have on family members not involved in the criminal activity;
- the extent to which the leaseholder has taken all reasonable steps to prevent or mitigate the criminal activity;
- the extent of participation or culpability of the leaseholder, or other household members, in the offending action, including whether the culpable member is a minor, a person with disabilities, or a victim of domestic violence, dating violence, sexual assault, or stalking;
- and with regard to illegal drug use by a household member who is no longer engaged in such activity, whether the household member is participating in or has successfully completed a drug rehabilitation program, or has otherwise been rehabilitated successfully.

Is an arrest evidence of criminal activity that can support an adverse admission, termination, or eviction decision?

No. An arrest shows nothing more than that someone probably suspected the person of an offense. In many cases, arrests do not result in criminal charges. In the 75 largest counties in the country, about one-third of felony arrests did not result in conviction, with about one-quarter of all cases ending in dismissal.

Arrest records are often inaccurate or incomplete (e.g., by failing to indicate whether the individual was prosecuted, convicted, or acquitted). As a result, relying on arrests not resulting in conviction as the basis for denying applicants or eviction may result in unwarranted denials to or eviction from federally subsidized housing.

What are some examples of PHA best practices on the use of criminal records in screening for criminal activity?

- Adopt admission policies that limit criminal record screening to assessments of conviction records
- Allow public housing and Housing Choice Voucher applicants to address and present mitigating circumstances regarding criminal backgrounds prior to admission decisions.
- Adopt lookback periods that limit what criminal conduct is considered during the screening process based on when the conduct occurred and the type of conduct.
- Adopt admission policies that enumerate the specific factors that will be considered when the PHA evaluates an individual's criminal record.
- Implement pilot programs that allow formerly incarcerated persons who have been released from prison within the past two or three years to be added to an existing voucher of a family member if all involved agree to participate and the formerly incarcerated individual agrees to six months to one year of supportive services with nonprofit partners.
- Hire an offender reentry housing specialist who collaborates with a formerly incarcerated individual's parole officer, landlord, and treatment provider to ensure successful reentry into the community.

For more information see:

HUD's Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing

<http://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf>