

Housing Access for Domestic Violence Survivors with Criminal Records



**CATHERINE BISHOP
NAVNEET GREWAL
MELIAH SCHULTZMAN
NATIONAL HOUSING LAW PROJECT
SEPTEMBER 7, 2011**

HOUSING JUSTICE

National Housing Law Project

www.nhlp.org

GoToWebinar Interface

1. Viewer Window

GoToWebinar Viewer

CB Presentations™

Give Online Punch

Audio: Use your microphone and speakers (VoIP) or call in using your telephone.

Dial: (805) 879-4135
Access Code: 105-748-644
Audio PIN: 74

Corena Bahr
CEO and Founder
CB Presentations

CITRIX

2. Control Panel

File View Help

File View Help

Audio

Audio Mode: Use Telephone
 Use Mic & Speakers

Dial: (805) 879-4135
Access Code: 105-748-644
Audio PIN: 74

If you're already on the call, press #74# now.

Questions

Questions Log

Welcome! Please type any questions/comments in the Question and Answer section of your control panel.

[Enter a question for staff]

Send

Give Online Punch
Webinar ID: 576-794-892

GoToWebinar™

Housekeeping

3

- Materials were emailed yesterday and will be emailed again after the webinar, along with evaluations.
- Materials and recording will be posted at www.nhlp.org in the Attorney/Advocate Resource Center, Domestic Violence.
- MCLE certificates will be emailed to California attorneys.

Today We'll Cover:

4

- **Housing barriers faced by domestic violence survivors who have criminal records**
- **Laws and rules affecting access to housing for persons who have criminal records**
- **Advocacy strategies for helping survivors with criminal records to obtain housing**
- **Case examples**
- **Policies that can improve housing access for survivors with criminal records**

Discussion

5

- What are some reasons why a domestic violence survivor might have criminal history (such as an arrest, conviction, or guilty plea)?
- Enter answers in the Questions box.

The Problem

6

- **Survivors often have criminal records:**
 - Survivors who acted in self-defense simply plead to charges.
 - Survivors who are limited English proficient may be unable to communicate with law enforcement.
 - Survivors commit criminal acts (i.e. prostitution, selling or taking drugs) under threats or coercion from their batterers.
- **Many housing providers screen for criminal history in reviewing tenant applications.**
- **As a result, criminal history is frequently a barrier for survivors applying for housing.**

Housing and Criminal History: Laws and Rules

7

**AN OVERVIEW OF THE POLICIES THAT
AFFECT INDIVIDUALS WITH CRIMINAL
HISTORY WHO ARE APPLYING FOR HOUSING**

“Federally Assisted Housing”: Restricted Programs

8

Public Housing Agency (PHA)-Administered Programs

Public housing

Section 8 voucher program

Section 8 moderate rehab

Rural Development (RD) Programs

Section 514 and 515* Rural Housing

HUD-Assisted Programs

Project-based Section 8

Section 202 elderly housing

Section 811 supportive housing for people with disabilities

Section 221(d)(3) Below Market Interest Rate Program

Section 236 Rental Program

*A federal statute extends the criminal history bars to Section 514 and 515 Rural Housing, but United States Department of Agriculture regulations do not make the bars mandatory.

Federal Housing Programs Without Restrictions

9

NO Federal Restrictions

Low-Income Housing Tax Credit
(LIHTC)

Shelter Plus Care (serves homeless
persons with disabilities)

Supportive Housing Program for the
Homeless

Housing Opportunities for Persons with
AIDS (HOPWA)

“Federally Assisted Housing”: Eligibility Criteria

10

- **MUST** deny admission to an applicant who:
 - Is subject to a lifetime registration requirement under a state sex offender registration law.
 - Was convicted of manufacturing or producing methamphetamine on the premises of “federally assisted housing.”
 - ✦ Note: The exclusion ONLY applies to applicants for the public housing, voucher, and Section 8 moderate rehab programs.
 - Was evicted from “federally assisted housing” for drug-related criminal activity within the previous three years UNLESS the applicant completed a drug rehabilitation program approved by the public housing agency (PHA).

*Note: A federal statute extends these bars to Section 514 and 515 Rural Housing, but United States Department of Agriculture regulations do not make the bars mandatory.

“Federally Assisted Housing”: Eligibility Criteria

11

- **MAY** deny admission to an applicant who committed:
 - Drug-related criminal activity.
 - Violent criminal activity.
 - “Other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents, the owner, or public housing agency employees.”

“Federally Assisted Housing”: “Other Criminal Activity”

12

- “Other criminal activity” is **limited** by statute.
 - The criminal activity **MUST** adversely affect the health, safety or right to peaceful enjoyment of the premises.
 - HUD guidance indicates that many offenses cannot be grounds for denial.
 - Takeaway point: There are strong arguments that survivors with criminal history that doesn’t affect health or safety—such as shoplifting, prostitution, or writing bad checks—should not be denied housing based on this history.

“Federally Assisted Housing” – Eligibility Criteria

13

- The criminal activity must have occurred within a **“reasonable time”** before the admission decision.
 - A “reasonable time” is not defined in the statute or HUD regulations.
 - HUD guidance
 - ✦ 5 years may be reasonable for serious offenses.
 - ✦ Public housing agencies (PHAs) and HUD-assisted owners may use a different period for different categories of offenses.
 - Local policies, which must be developed:
 - ✦ PHA
 - Section 8 Administrative Plan – voucher program
 - Admissions and Continued Occupancy Policy (ACOP) – public housing
 - ✦ HUD-assisted owner – tenant selection plan
 - ✦ Rural Development (RD) owner – management plan

“Federally Assisted Housing”: Eligibility Criteria

14

- **Mitigating circumstances**
 - Public housing – PHAs **MUST** consider the time, nature, and extent of the conduct, including the seriousness of the offense.
 - Voucher program and HUD-assisted housing – PHAs and owners **MAY** consider all relevant circumstances.
 - Section 514 and 515 Rural Housing – Owners cannot reject applicants on the basis of arbitrary criteria.

HUD's Position

15

- **Highlights of 6/17/2011 Letter from HUD Secretary Donovan to all PHAs:**
 - Encourages PHAs to allow ex-offenders to rejoin their families in federally assisted housing, where appropriate
 - Says that PHAs should consider evidence of rehabilitation and evidence of the applicant's participation in social services
 - Notes that there are only 2 explicit bans on occupancy based on criminal history
- **Letter can be used in working with housing providers on their admissions policies**

Protections Specifically for DV Survivors

16

- **Violence Against Women Act (VAWA)**
 - Protects survivors of domestic violence, dating violence, and stalking during the admissions process.
 - Applies to applicants to public housing, Section 8 voucher, project-based Section 8, Section 202, and Section 811.
- **VAWA provides the following:**
 - “That an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of program assistance.”

Poll

17

- Under VAWA, can PHAs and Section 8 landlords deny housing to a DV survivor based on criminal history related to the violence against her?

HUD's Position on DV & Criminal History

18

- HUD VAWA final regulations, 75 Fed. Reg. 66255, 24 C.F.R. 982.553(e):
 - “HUD agrees that victims of domestic violence, dating violence, or stalking must not be denied assistance or terminated from programs based solely on a criminal history related to domestic violence dating violence, or stalking”

“Federally Assisted Housing”: Denial Process

19

- If a PHA proposes to take adverse action on the basis of a criminal record obtained by the PHA for the PHA or on behalf of an owner, the PHA must:
 - Send a copy of the criminal record to the applicant and the subject of the record (if different).
 - Provide the subject of the record an opportunity to dispute the accuracy and relevance of the information.
 - The applicant must have an opportunity to dispute the criminal record before the denial of admission.

“Federally Assisted Housing”: Denial Process

20

- A written notice of denial is required.
 - The notice must state:
 - ✦ The reasons for the denial.
 - A simple statement that the “applicant did not meet the standards for admission” is not sufficient.
 - ✦ How and when the applicant can contest the decision.
 - ✦ A person with a disability may request a reasonable accommodation.
- Applicant file should be available for review upon request.

“Federally Assisted Housing”: Denial Process

21

- Arrests may be considered by a PHA or owner
- However, arrests alone do not prove criminal activity
- If PHAs/owners screen for arrests, they should examine the facts underlying the arrests
- *See Landers v. Chicago Housing Authority*, 936 N.E.2d 735 (2010)
 - PHA failed to consider that public housing applicant’s homelessness had resulted in arrests, but no convictions.
 - The arrests were insufficient to show that the applicant was a threat to safety and welfare of the public housing community.
 - The court found the applicant was wrongly denied admission.

“Federally Assisted Housing”: Informal Review

22

- **An applicant is entitled by statute, regulations, and/or due process to a review of the decision.**
 - The nature of the review varies by program.
 - The review must provide the applicant a reasonable opportunity to contest the basis for the decision.
- **The PHA or owner must provide a written decision within a reasonable period of time after the hearing stating the reasons supporting the decision and the evidence relied upon.**

All Housing: Antidiscrimination Laws

23

- In general, a private landlord can deny an applicant on the basis of prior criminal activity.
- But, the Fair Housing Act offers some protection:
 - A blanket rule against renting to individuals with a prior arrest or conviction could constitute race discrimination due to its disparate impact on people of color.
 - Applicants with criminal history related to a disability may seek an exception to an admissions policy (see next slide)
- Local laws may also offer some protection:
 - A few cities bar discrimination based on criminal history.

All Housing: Fair Housing Act & Disability

24

- If a survivor's criminal history is related to a disability, she may be able to seek an exception to an admissions policy as a "reasonable accommodation"
 - Past addiction can be a disability. A housing provider can be asked to disregard a survivor's pre-rehabilitation convictions where the convictions arose from the survivor's addiction.
 - May be successful if survivor can show that she hasn't used substances for a period of time, criminal activity ceased once she entered rehab, and/or she is receiving supportive services.
 - Note: Current use of illegal substances is not a disability under the Fair Housing Act

All Housing: Consumer Laws

25

- **Fair Credit Reporting Act (FCRA)**
 - The FCRA applies if landlords use a consumer reporting agency to conduct a background check.
 - Contents of the report
 - ✦ A consumer report cannot include arrests over 7 years old.
 - ✦ Note: Some state laws are more restrictive. In California, for example, an agency cannot report:
 - Arrests that did not result in convictions.
 - Convictions over 7 years old.

All Housing: Consumer Laws

26

- Notice requirements
 - ✦ If a landlord denies an application due in part to information in a consumer report, the landlord must send a notice to the applicant. The notice must:
 - Include the name, address, and telephone number of the agency that made the report.
 - Explain that the applicant is entitled to a free report from the agency within 60 days.
 - State that the agency did not make the decision to deny the application.
 - Explain that the applicant is entitled to dispute the accuracy the report.

Advocacy Strategies

27

**POTENTIAL OPTIONS FOR ASSISTING
DOMESTIC VIOLENCE SURVIVORS WITH
CRIMINAL HISTORY**

Advocacy Strategies: All Housing

28

- Client should obtain and review her rap sheet.
- Client should apply to several housing providers, as some have more lenient policies than others.
- Client should gather letters of support showing that she will be a good tenant:
 - ✦ Employer, teacher, case worker, drug or alcohol treatment program, current or prior housing provider, parole, or probation officer.
 - ✦ Emphasize that circumstances have changed, client is motivated, responsible, gets along well with others, is not a threat to others, is receiving support/services, and wants to improve her life.
 - ✦ Note: Need for housing is usually not persuasive

Advocacy Strategies: All Housing

29

- **Examples of other evidence that may be helpful:**
 - Evidence of completion of rehabilitation programs, counseling, and social services programs (including while in custody).
 - Evidence of completion of job training programs.
 - Signed statement that client has not engaged in criminal activity during a specified period of time.
 - School transcripts.
 - Documents demonstrating history of paying rent & utilities.
 - Pay stubs and job performance evaluations.
 - Testimony from those familiar with the client's changed circumstances.



Letters of support

Building super

*Courtesy of Legal Action Center

To Whom It May Concern:

I, [REDACTED], Superintendent of the building located at [REDACTED] Street, Owner by [REDACTED] Management Corporation, certifies that I have known Mr. [REDACTED], and his family for more than 10 years.

During the time that I have been working in this building Mr. [REDACTED] and his family have demonstrated to be honest and reliable persons with high degree of responsibilities and obligation.

Mr. [REDACTED] and his family have been a good tenants and good neighbors with the rest of the people living in this building.

If I can provide additional information, please don't hesitate to ask.

Judy Novotny
[REDACTED]

Phone: 212 [REDACTED]

Address: [REDACTED]
New York, NY. 10032.



Letters of support

Prison official

*Courtesy of Legal Action Center

To Whom It May Concern:

Please be advised that [REDACTED] was incarcerated at the New York State Department of Correctional Services from [REDACTED], 1995 thru [REDACTED], 2003. During the period of July 16, 2001 thru January 2, 2003, Ms. [REDACTED] was employed as a teacher's aide in our pre-GED Program. Prior to this, she worked as a porter, laundry helper, and as a forest worker.

Ms. [REDACTED] received satisfactory evaluations, in her job assignments and while incarcerated she attained her GED (2000). In addition to her paid work assignments, Ms. [REDACTED] volunteered to work throughout the facility.

She was recognized for her positive efforts for assisting in Bayview's Re-accreditation Audit through the American Correctional Association.

Sincerely,

Shelda Washington,
Asst. Deputy Supt. of Programs

Advocacy Strategies: “Federally Assisted Housing”

32

- Make sure that the housing provider is following the federal rules and its own policies as outlined in the Section 8 Admin Plan, Public Housing ACOP, tenant selection plan, or management plan.
- Make sure clients request an informal hearing or review.
 - Before the hearing, clients should:
 - ✦ Request all documents and information about the denial from the PHA or owner.
 - ✦ Obtain a copy of their criminal record.

Discussion

33

- Have you assisted a client with criminal history in obtaining housing? What advocacy approaches did or did not work?
- Enter answers in Questions box.

Examples of the Impact of Criminal Screening on Survivors

34

**ATTORNEYS AND ADVOCATES CAN PLAY A
KEY ROLE IN HELPING SURVIVORS TO
CHALLENGE DENIALS OF HOUSING THAT ARE
BASED ON A SURVIVOR'S CRIMINAL HISTORY**

Barriers to Applying for Housing: Jan

35

- Six years ago, at the advice of her attorney, Jan pleaded guilty to assaulting her abuser, even though she acted in self-defense.
- Jan submitted an application for housing at a project-based Section 8 development.
- The property manager at the project denied Jan's application, stating that she failed to meet the complex's criminal screening criteria.

Tenant Selection Plan Language

CRIMINAL CONVICTION CRITERIA

1. Upon receipt of the rental application and screening charge, landlord will conduct a search of public records to determine whether the applicant or any proposed tenant has been convicted of, or pled guilty to or no-contest to, any crime.
 - a) A conviction, guilty plea or no-contest plea for any felony ever involving serious injury, kidnapping, death, arson, rape, sex crimes and/or child sex crimes, extensive property damage or drug-related offenses (sale, manufacture, delivery or possession with intent to sell) class A/felony burglary or class A/felony robbery shall be grounds for denial of the rental application.
 - b) A conviction, guilty plea or no-contest plea for any other felony (other than listed above) where the date of disposition, release or parole occurred within the last seven (7) years shall be grounds for denial of the rental application.
 - c) A conviction, guilty plea or no-contest plea for any misdemeanor or gross misdemeanor involving assault, intimidation, sex related, drug related (sale, manufacture, delivery or possession with intent to sell) property damage, weapons charges, obscenity and related violations where the date of disposition, release or parole occurred within the last seven (7) years shall be grounds for denial of the rental application.

Advocacy Strategies: Jan

37

- Jan should request an informal meeting with the owner. Possible advocacy strategies:
 - Explain circumstances surrounding the guilty plea. Include evidence of DV and note VAWA protections.
 - Argue that a policy of looking at a guilty plea entered 6 years ago is unreasonable since Jan had no other criminal history.
 - Submit letters of support from a DV agency and employer, and evidence of participation in social services programs.
 - Emphasize changed circumstances.

Excerpts from Advocacy Letter

(b) Good behavior

Ms. F's prison record and her conduct after release have been exemplary. Ms. F does not merely stay out of trouble; she is actively involved in positive endeavors. Her activities include helping other battered women and educating the public about the effects of domestic violence.

(c) Rehabilitation

Ms. F has undergone years of counseling and treatment for the psychological condition known as battered women's syndrome. While in prison, she took optional classes to learn more about many subjects, including spousal abuse and battered women's syndrome. As a result of her increased knowledge and counseling, she is not likely to involve herself in an abusive relationship again.

(d) Changed circumstances

Ms. F's circumstances have changed drastically. She no longer lives in an abusive environment. This should alleviate any concerns you may have about the health and safety of other residents. Moreover, due to extensive counseling and education, it is implausible that Ms. F will get involved in another abusive relationship. Her focus today is on her children, her grandchildren, her volunteer work, her arts and crafts, and her health.

Barriers to Applying for Housing: Iman

39

- Iman applied for public housing and was asked to complete an application.
 - Applicants were required to disclose “all criminal history.”
 - Iman was arrested twice for assault, both times because officers believed her abuser, whose English was superior to hers.
 - Iman disclosed the arrests on her application, but made a note that the charges were dropped in both cases.
- The public housing agency (PHA) denied Iman’s application because of her “past criminal activity.”

Advocacy Strategies: Iman

40

- Iman should request an informal hearing with the PHA. Possible advocacy strategies:
 - Arrests alone do not prove criminal activity.
 - Denying housing based solely on arrests is arbitrary, because arrests cannot indicate a tenant's propensity for violence.
 - PHAs must consider mitigating circumstances in reviewing public housing applications.
 - Discrimination against DV survivors violates VAWA and fair housing laws.
 - Denying housing based solely on arrests has a disparate impact on people of color, violating fair housing laws.
 - Check whether state laws offer additional protections.

Discussion

41

- Do you have other advocacy tips for how you would handle Jan or Iman's case?
- Use Questions box to provide suggestions.

Advocacy Strategies: Improving Local Policies

42

- **Encourage housing providers to adopt reasonable policies on prior criminal activity.**
 - Advocates have successfully changed policies that considered arrests or that looked at all criminal convictions, regardless of how old.
- **The policies should consider the needs of domestic violence survivors.**
 - For example, housing providers should not deny an applicant on the basis of prior criminal activity if the applicant can show that the criminal activity was related to her status as a victim of domestic violence.

Lansing, Michigan

43

- **The housing authority's policy provides:**
 - When screening reveals negative information, such as a prior arrest, inquiries will be made regarding the circumstances contributing to the negative reporting, to ascertain whether it was the consequence of DV against the applicant.
 - Any inquiries will make clear that applicants have a right to keep any history of DV against them confidential.
 - When inquiries reveal that the negative reporting was the consequence of DV, the applicant will not be denied housing.

San Mateo County, California

44

- **The housing authority's policy provides:**
 - The housing authority acknowledges that a victim of DV may have an “unfavorable history” that would warrant denial.
 - If the housing authority decides to deny admission to an applicant, it will include in its notice of denial a statement regarding VAWA's protections.
 - The housing authority will also offer the applicant an opportunity to provide documentation affirming that the cause of the unfavorable history is that a member of the applicant family is a victim of DV.

Resources

45

- NHLP's guidebook, An Affordable Home on Reentry, <http://www.nhlp.org/guidebooks>
- NHLP's OVW grantees website, <http://nhlp.org/OVWgrantees>
- NHLP's Reentry website, <http://nhlp.org/resourcecenter?tid=86>

Contact Information

46

Catherine Bishop, cbishop@nhlp.org

Navneet Grewal, ngrewal@nhlp.org

Meliah Schultzman, mschultzman@nhlp.org

Phone:

(415)-546-7000

This project was supported by Grant No. 2008-TA-AX-K030 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.