

HOUSING JUSTICE

National Housing Law Project

Newsletter May 2010

Survivors with a Criminal Record

Survivors of intimate partner violence may have a higher level of interaction with law enforcement than the population as a whole. When a survivor reports abuse, the police may arrive at the housing unit and may arrest both the survivor and the abuser. Further, some survivors may have been forced into criminal activity by their abusers. Because of the relationship between law enforcement and domestic violence, many survivors have a criminal record. This newsletter will first address the general rules regarding criminal activity and admission to federally assisted housing, and then how the Violence Against Women Act (VAWA) the admission process.

Can a survivor be rejected because of a criminal record?

For the programs listed under the federally restricted column in the table below, federal

law mandates that housing providers deny applicants admission to their program for certain criminal activity, and gives discretion to deny applicants for other types of criminal activity. For programs listed under the unrestricted column in the table below, state law may apply, but otherwise, screening policies are left to the housing provider.

Mandatory Denials

For restricted federal programs, housing providers must deny admission for three types of criminal activity. A housing provider must deny admission to someone who must register as a lifetime sex offender in any state. Further, a housing provider must reject an applicant who has been evicted from federally assisted housing for drug-related activity within the previous three years. However, the housing provider may waive the ban if the applicant has completed an approved drug treatment program or circumstances have

Federal Restrictions Apply	No Federal Restrictions
Public Housing	LIHTC
Section 8 Voucher Program	Shelter Plus Care
Section 8 Mod Rehab	Supportive Housing Program
Project-Based Section 8	HOPWA
Section 202	
Section 811	
Section 221(d)(3)	
Section 236	

In this Issue:
Criminal Records and Survivors
Statistic of the Month

(Continued from page 1)

changed. Changed circumstances include, for example, the household member responsible for the drug-related criminal activity has died or is in prison. Finally, for public housing, the Section 8 voucher program, and the Section 8 moderate rehab program, a housing provider must deny an applicant who has been convicted of manufacturing or producing methamphetamine in federally assisted housing. For other types of criminal activity, federal law gives the housing provider the discretion to admit the applicant, as described in the next section.

Discretionary Admission

Categories

The housing provider may, but is not required to, reject an applicant for drug-related crimes, violent crimes, and other crimes that may threaten the health, safety, or right to peaceful enjoyment of the building by other residents or housing provider employees. It is important to note that “other crimes” are limited to those that adversely affect the health, safety or right to peaceful enjoyment of the premises. HUD guidance is clear that this category is not a catchall, and that a number of crimes cannot serve as a basis for denial of admission. The argument that a number of crimes that survivors may have on their record, such as prostitution, bad checks, or shoplifting, do not threaten health, safety, or

peaceful enjoyment is strong.

Look Back Period

For the categories of offenses that can lead to discretionary denial, housing providers can only consider crimes that occurred within a “reasonable time” of time before the admission decision. While there is no official definition of “reasonable time”, HUD guidance cites five years as a reasonable amount of time for a look back period for serious crimes. Some housing providers have set three years as the period, or staggered the look back period to distinguish between serious and minor crimes. On the other extreme, some housing providers use ten years, or an indefinite period of time to screen tenants. If that is the case, advocates should urge the housing provider to shorten the look back period.

A housing provider may also deny admission to someone who provides inaccurate or incomplete information in an application form.

Mitigating Circumstances

If an applicant has a criminal record, the housing provider should consider evidence of mitigating circumstances. Mitigating circumstances are facts that put the criminal record in context and help demonstrate that the person will be a good tenant. For example, the seriousness (or lack of it) of the crimes, a good reputation in the community, or positive changes since the arrests or convictions are mitigating circumstances. Significantly, the fact that an arrest or conviction occurred because of an incidence of domestic violence is also a mitigating factor. The burden of presenting mitigating circumstances is on the applicant. An applicant should present letters from a parole officer, church group, social worker, or other trusted community member showing that he or she is responsible, respect-

Statistic of the Month

In 2005, an estimated 14,094,186 people were arrested in the United States.

Uniform Crime Reporting Program,
“Crime in the United States 2005”, Federal Bureau of Investigation, U.S. Department of Justice, available at http://www.fbi.gov/ucr/05cius/data/table_29.html

ful of others, and will be a good tenant. Additionally, evidence of participation in a drug rehabilitation, vocational, or educational program demonstrates mitigating circumstances.

What Procedures Must the Housing Provider Follow?

If a housing provider proposes to deny admission on the basis of a criminal record, it must send the applicant a copy of the criminal record it relied on. It must also send notice in writing that explains the reasons the applicant is not eligible for the housing. The notice is not the final word. The applicant has the right to challenge the decision through some sort of informal meeting or hearing, in which the applicant can again put forth evidence showing that she or he will be a good tenant. The applicant has the right to have an attorney or advocate with them at the informal hearing.

What if the Arrest was Directly Related to an Incidence of Domestic Violence?

VAWA provides that the fact “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.” As noted, survivors of domestic violence often have contact with law enforcement, and may have been arrested and even convicted of crimes. A housing pro-

vider should certainly not use arrests that occurred because of police responding to violence in the home as a reason to deny admission. For convictions resulting from behavior that was related to the abuse, advocates should argue that VAWA prohibits denial of admission as well. Further, even where VAWA does not apply, a policy of denying applicants on the basis of criminal activity related to domestic violence may violate fair housing laws if it has a disparate impact on survivors.

Advocates should ensure that their local housing providers’ admission policies specifically state that they will not deny admission to an applicant because of criminal activity related to domestic violence. For Section 8 vouchers and public housing, these policies are found in the Administrative Plan and Admissions and Continued Occupancy Policy, respectively. Other housing providers should have written tenant selection policies on file, so as to ensure that their application process is not arbitrary. ■

For technical assistance or requests for trainings or materials, please contact:

Navneet Grewal, ngrewal@nhlp.org,
 Meliah Schultzman, mschultzman@nhlp.org
 National Housing Law Project
 614 Grand Ave. Suite 320
 Oakland, CA 94610.
 Phone: (510)251-9400
www.nhlp.org

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/program/exhibition are those of the author(s) and do not necessarily reflect the views of the Department of Justice, Office on Violence Against Women.

What: NHLP will host a webinar entitled **“Access to Housing: Survivors with Criminal Records.”**

When: May 25, 2010, 2:00pm– 3:00pm EST

Where: Webinar

Who: The training is open to (and free for) all OVW grantees and subgrantees. One hour of MCLE credit will be offered to all California attorneys.

Contact: Meliah Schultzman, (510)251-9400 ext. 3116