

Housing Access for Domestic Violence Survivors with Criminal Records



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HOUSING JUSTICE

National Housing Law Project

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Today We'll Cover:

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

The Problem

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- **Survivors often have criminal records:**
 - Many survivors who acted in self-defense simply plead to charges.
 - Survivors who are limited English proficient may be unable to communicate with law enforcement.
 - Many survivors commit criminal acts 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.**

Barriers to Applying for Housing: Jan

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- Five years ago, at the advice of her attorney, Jan pleaded guilty to assaulting her abuser, even though she acted in self-defense.
- Jan later applied for a Rural Development unit. Her application was denied because of her criminal record.
- At a meeting with the manager, Jan submitted letters of support from her employer and DV agencies.
- **The manager refused to reconsider Jan's application.**

The criminal history policy that resulted in Jan's denial

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.
 - d) A conviction, guilty plea or no-contest plea, for any B or C misdemeanor in the above categories, or those involving criminal trespass I, theft, dishonesty, prostitution, where the date of disposition, release, or parole have occurred within the last five (5) years shall be grounds for denial of the rental application.
2. Pending charges for any of the above (a, b, c, or d) will result in a suspension of the application process until the charges are resolved. Upon resolution, if an appropriate apartment is still available, the processing of the application will be completed. No apartment will be held awaiting resolution of pending charges.

Barriers to Applying for Housing: Iman

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- Iman applied for a private, unsubsidized apartment 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 landlord denied Iman’s application because of her “criminal background.”

Housing and Criminal History: Laws and Rules

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

Federally Assisted Housing

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Federal Restrictions Apply

Public housing

Section 8 voucher program

Section 8 moderate rehab

Project-based Section 8

Section 202

Section 811

Section 221(d)(3)

Section 236

Section 514 and 515*

NO Federal Restrictions

LIHTC

Shelter Plus Care

Supportive Housing Program

HOPWA

Federally Assisted Housing – Eligibility Criteria

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- **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 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 PHA.

*Federal statute extends the bars to Section 514 and 515 housing, but USDA regulations do not make the bars mandatory.

Federally Assisted Housing - Eligibility Criteria

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- **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 – Eligibility Criteria

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- The criminal activity must have occurred within a **“reasonable period”** before the admission decision.
 - A “reasonable period” is not defined in the statute or HUD regulations.
 - HUD guidance
 - ✦ 5 years may be reasonable for serious offenses.
 - ✦ PHAs and HUD-assisted owners may want to use a different period for different categories of offenses.
 - Location of local policies
 - ✦ PHA
 - Admin Plan – voucher program
 - ACOP – public housing
 - ✦ HUD-assisted owner – tenant selection plan
 - ✦ RD owner – management plan

Federally Assisted Housing – Eligibility Criteria

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- “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

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- **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 housing – Owners cannot reject applicants on the basis of arbitrary criteria.

Federally Assisted Housing – Eligibility Criteria

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- **Violence Against Women Act (VAWA)**
 - 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.”
- **Does VAWA prohibit housing providers from denying housing to applicants who have criminal history that is related to their status as victims of domestic violence?**

Federally Assisted Housing – Denial Process

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- If a PHA or HUD-assisted owner proposes to take adverse action on the basis of a criminal record obtained by the PHA, the PHA or owner 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.

Federally Assisted Housing – Denial Process

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- 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.

Federally Assisted Housing – Informal Review

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- **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.**
 - The written decision must state the reasons behind it and the evidence relied upon.

Other Housing – Anti-Discrimination Laws

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- In general, a private landlord can deny an applicant on the basis of prior criminal activity.
- Fair Housing Act – 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.
- Local laws – A few city ordinances prohibit discrimination against individuals with a criminal record.

Other Housing – Consumer Laws

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- **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 stringent. In California, for example, an agency cannot report:
 - Arrests that did not result in convictions.
 - Convictions over 7 years old.

Other Housing – Consumer Laws

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○ 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

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

Advocacy Strategies

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- Clients should apply to several housing providers, as some have more lenient policies than others.
- Help clients gather evidence showing that they will be good tenants.
 - Letters of support critical
 - ✦ Employer, teacher, case worker, drug or alcohol treatment program, current or prior landlord, parole or probation officer.
 - Information from prison or jail about programs completed in custody



Letters of support

Building super

*Courtesy of Legal Action Center

February 25, 2005

To Whom It May Concern:

I, [REDACTED], Superintendent of the building located at [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 Moratin

Phone: 212 [REDACTED]

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

Latona to Before me

on 4th day of March 2005

[REDACTED]

EDDY TAVERAS
Notary Public, State of New York
No. 5006788
Qualified in Westchester County
Commission Expires Jan. 11, 2006



Letters of support

Prison official

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

*Courtesy of Legal
Action Center

Advocacy Strategies – Federally Assisted Housing

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- Make sure that the housing provider is following the federal rules and its own policies as outlined in the Admin Plan, 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.

Advocacy Strategies: Jan

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- Jan's attorney contacted the manager by phone and mail and explained that:
 - Before denying Jan's application, the manager had a duty to examine mitigating factors, such as the age of her conviction and her letters of support.
 - It was unlikely that Jan would be involved in another abusive relationship.
 - The criminal history policy was unreasonable.
- The manager later offered a unit to Jan.

Advocacy Strategies: Iman

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- **Iman's attorney contacted the landlord and noted:**
 - Past arrests have no probative value, and denying an application on this basis is arbitrary and discriminatory.
 - The landlord's policy of denying housing applications based on arrests without convictions has a disparate impact on members of protected groups, violating fair housing laws.
 - Discrimination against domestic violence survivors violates fair housing laws
 - State law prohibits consumer reporting agencies from reporting arrests for which a conviction did not result.
- **The manager later offered a unit to Iman.**

Advocacy Strategies: Improving Local Policies

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- Encourage housing providers to adopt reasonable policies on prior criminal activity.
- 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

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- **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

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- **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

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- NHLP's guidebook, An Affordable Home on Reentry, <http://www.nhlp.org/guidebooks>
- NHLP's DOJ grantees website, <http://nhlp.org/resourcecenter?tid=96>
- NHLP's Reentry website, <http://nhlp.org/resourcecenter?tid=86>

Contact Information

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