



Housing Rights for Survivors of Domestic Violence Interacting with the Criminal Justice System

March 30, 2020

NHLP's Nuisance Ordinance and Crime-Free Housing Initiative

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HOUSING LAW
PROJECT

- NHLP offers training and technical assistance on nuisance ordinances and crime-free housing policies
 - nuisance@nhlp.org
 - Mariel Block, mblock@nhlp.org
- Nuisance initiative website
 - Resources, including info sheets and articles



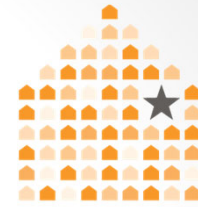
www.nhlp.org/initiatives/nuisance

Today's Webinar

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- How and why survivors interact with the criminal justice system
- Basic rules regarding admission to federally assisted housing
- Examples of existing housing policies that permit individuals who have engaged with the criminal justice system to access housing
- Impact of nuisance and crime-free ordinances on survivors of DV
- Practice Tips
- Q&A

This project was supported by Grant No. 2017-TA-AX-K052, 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.



NATIONAL NETWORK
TO END DOMESTIC
VIOLENCE

Survivors of Domestic Violence and the Criminal Justice System

Monica McLaughlin, Director of Public Policy, National Network to
End Domestic Violence

NNEDV



- The **National Network to End Domestic Violence** is a social change organization dedicated to creating a social, political and economic environment where violence against women no longer exists.
- NNEDV's **Collaborative Approach to Safe Housing for Survivors Project** provides training and technical assistance to improve coordination between domestic violence and homeless services.

DV & Housing TA Consortium

Four Federal Agencies

- Family Violence Prevention & Services Program/HHS
- Office on Violence Against Women/DOJ
- Office for Victims of Crime/DOJ
- Office of Special Needs Assistance Programs/HUD

Five Technical Assistance Providers

- National Alliance for Safe Housing (NASH)
- Collaborative Solutions, Inc. (CSI)-HUD T.A
- National Network to End Domestic Violence (NNEDV)
- National Resource Center on Domestic Violence (NRCDV)
- Pennsylvania Coalition Against Rape

Consortium's Focus Areas

- Technical assistance, training, policy and practice guidance
- Resource development (policy & practice briefs, FAQs, tools)
- National Needs Assessment
- Safe Housing Partnerships website
safehousingpartnerships.org
- Building the evidence base for what works

SAFE HOUSING PARTNERSHIPS



The new website for the Domestic Violence and Housing
Technical Assistance Consortium

UNDERSTANDING THE INTERSECTIONS

BUILDING PARTNERSHIPS

EMPLOYING KEY APPROACHES

PUBLIC POLICIES

- Data, infographics, literature reviews, and reports that describe the intersections between domestic violence, sexual assault, homelessness, and housing
- Strategies for building effective and sustainable partnerships across systems and case studies of successful collaborations
- In-depth resource collections organized around four key approaches to addressing and preventing housing instability among survivors
- Access to relevant federal laws, regulations, and policies

Have questions? Need TA? Want training?
Contact the Consortium directly through the site!

Domestic Violence and Housing Technical Assistance Consortium
www.safehousingpartnerships.org



Survivors and the Criminal Justice System

- Seeking help for themselves from criminal justice system
 - Calls to law enforcement or 911 – to report violence or violations of orders of protection
 - Affidavits for administrative processes – Crime Victims Compensation; Visas
- Others calling on survivors behalf (or not)
 - Witnesses, neighbors, bystanders

How can the Criminal Justice System Help?

- May stop violence by removal of abuser (temp or potentially long-term)
- May connect survivor with advocacy program – lethality assessment
- May be the outcome a survivor would like to hold a perpetrator accountable

Potential Negative Impacts of the Criminal Justice System

- Dual or survivor arrest – when primary aggressor not identified
- Survivor may not want criminal justice intervention for a number of reasons
 - Negative previous experience
 - Did not make the call
 - May have other criminal history that comes to light
 - Immigration status
 - Concerns about other systems – child welfare, loss of housing
 - Wants abuse to stop but not to have criminal justice intervention – concern for perpetrator, family, financial stability

Survivors with a criminal records

- Common scenarios
 - Coerced into criminal activity by perpetrator
 - Substance use coercion
 - Trafficking
 - Use of defensive or protective violence or wrongly arrested

Impact of Criminal record

- Court process as a defendant, possible parole or imprisonment
- Inability to find housing or loss of housing
 - Eviction from nuisance ordinances, background checks that reveal criminal records
 - Advocates consistently report concern for survivors in housing search
- Inability to find work or loss of work
- Custody and child welfare concerns
- Continued dependence on abuser

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Housing Rights of Survivors with Criminal Records

National Housing Law
Project Webinar
March 30, 2020

ABOUT THE SHRIVER CENTER

The Shriver Center on Poverty Law fights for economic and racial justice. Over our 50-year history, we have secured hundreds of victories with and for people living in poverty in Illinois and across the country. Today, we litigate, shape policy, and train and convene multi-state networks of lawyers, community leaders, and activists nationwide. Together, we are building a future where all people have equal dignity, respect, and power under the law. Join the fight at **povertylaw.org**.



Admissions Rules to Federally Assisted Housing

Mandatory Bans

PHAs and project owners MUST deny admission to:

1. Anyone who has been convicted of **manufacturing methamphetamine on federally assisted property**;
2. Anyone subject to **lifetime registration for a sex offense**;
3. **Current users** of illegal drugs, abusers of alcohol, or pattern interfering with health, safety, peaceful enjoyment; or
4. Anyone who, **within the last 3 years**, has been **evicted from federal housing for drug-related criminal activity** *unless* (1) drug rehabilitation or (2) circumstances leading to eviction no longer exist.

Discretionary Bans

PHAs and project owners MAY consider denying admission, evicting or terminating for:

1. **Drug-related criminal activity** – manufacture, sale, distribution, use, or possession;
2. **Violent criminal activity** – use of or threatened use of physical force that will cause serious bodily injury or property damage;
3. Other criminal activity that would **adversely affect the health, safety, or right to peaceful enjoyment** of the premises by other residents, the owner, or public housing employees → *not a catch-all*

Limits on Discretion

PHAs and project owners' discretion subject to additional, important limits:

1. **Time** – Criminal activity must have occurred during a “*reasonable time*” before the screening takes place. 42 U.S.C. §13661(c)(2012).
2. **Violence Against Women Act (VAWA)**
3. **Civil Rights Laws**, including federal *Fair Housing Act*

Violence Against Women Act (VAWA)

Admissions: No denials by PHAs/owners on the basis that an applicant is or has been a survivor of **domestic violence, dating violence, sexual assault, or stalking**.

Evictions/Terminations: No evictions or terminations by PHAs/owners:

- on the basis she is a **survivor**;
- For crimes “**directly relating to**” the **abuse**;
- an incident of **actual or threatened violence** (does not constitute a “serious or repeated violation of the lease” or “good cause” for eviction).

Violence Against Women Act (VAWA)

Exception: PHAs/owners can evict/terminate assistance:

- If lease violation is **not based on acts of violence** against the tenant or member of tenant's household; or
- If PHA/owner can demonstrate an **actual and imminent threat** to other tenants or those employed at/providing service to the property if that tenant stays at their current housing.
 - **“Threat”** = physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm.
 - Eviction should occur only IF there is no other action to be taken that would reduce or eliminate the threat.

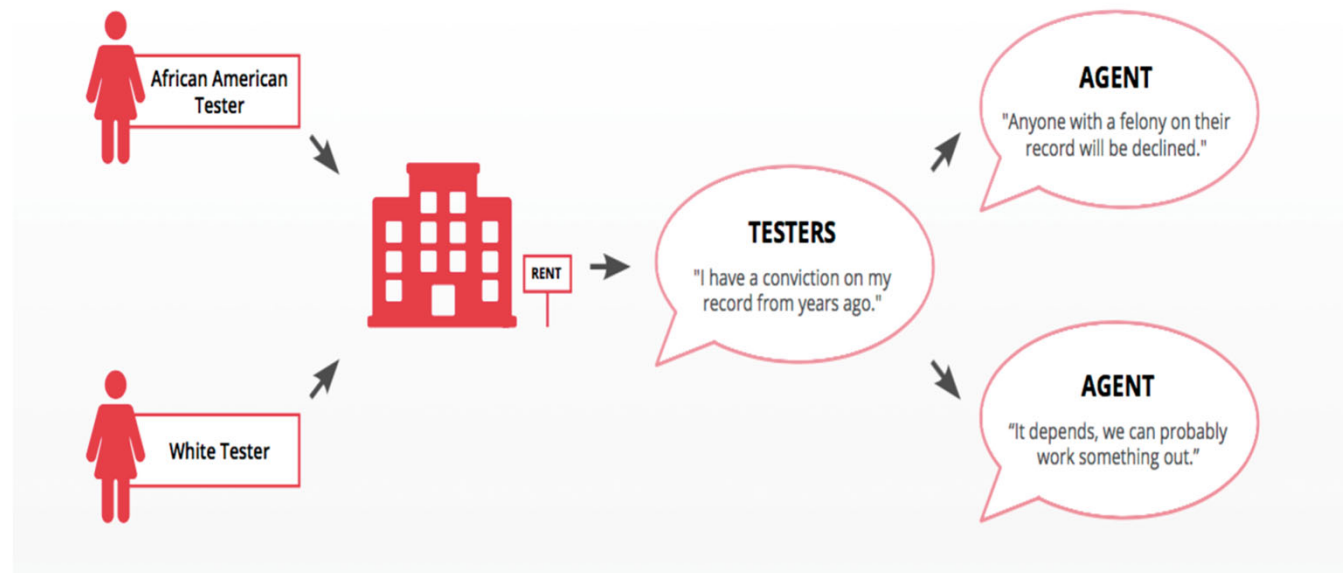
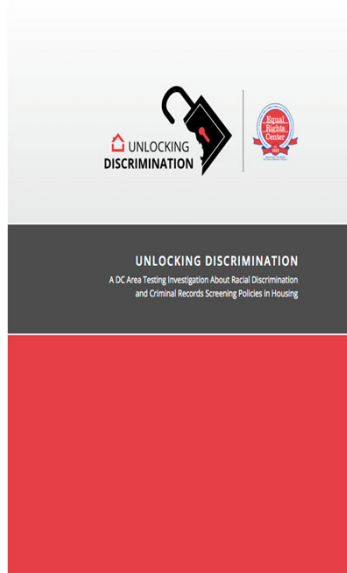
HUD OGC on Fair Housing & Criminal Records

Criminal records status is *not* a protected class.

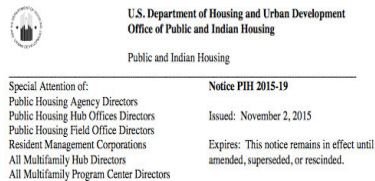
But adverse housing decisions based on a person's criminal record screening may violate the Fair Housing Act, which prohibits discrimination on the basis of race, national origin, and other protected classes.

1. ***Discriminatory treatment*** – criminal record as pretext for race
2. ***Disparate impact*** – facially neutral policies that have an unjustified disparate impact on racial minorities

Discriminatory Treatment



HUD Notices PIH 2015-19/H 2015-10



Subject: Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions

1. Background

For the past five years HUD has been an active member of the Federal Interagency Reentry Council. This Council, made up of more than 23 Federal Agencies, meets on a regular basis to act on issues that affect the lives of those released from incarceration. An important aspect of the Reentry Council's work has been to have each Federal Agency identify and address "collateral consequences" that individuals and their families may face because they or a family member has been incarcerated or has had any involvement with the criminal justice system.¹

In 2011, former HUD Secretary Shaun Donovan issued a letter to public housing authorities (PHAs) across the country emphasizing the importance of providing "second chances" for formerly incarcerated individuals.² Secretary Donovan urged PHAs to adopt admission policies that achieve a sensible and effective balance between allowing individuals with a criminal record to access HUD-subsidized housing and ensuring the safety of all residents of such housing. A year later, Secretary Donovan encouraged owners of HUD-assisted multifamily properties ("owners") to do the same and reiterated HUD's goal of "helping ex-offenders gain access to one of the most fundamental building blocks of a stable life – a place to live." HUD has also previously stressed the troubling relationship between housing barriers for individuals with criminal records and homelessness, stating that "the difficulties in reintegrating into the community increase the risk of homelessness for released prisoners, and homelessness in turn

¹ For more information on the initiatives of the Council members, see <https://ojasitecenter.org/interagency/reentry/>.

² Letter from Shaun Donovan, Secretary, United States Department of Housing and Urban Development, to Public Housing Authority Executive Directors (June 17, 2011), available at http://ojasitecenter.org/interagency/reentry/letter_from_donovan_to_phas_6-17-11.pdf.

- One Strike is not required.
 - Arrests alone cannot justify denial of admission or eviction.
 - Applicants and tenants have due process rights.
 - Criminal records screening must comply with civil rights laws.
 - Best practices
- For economic and racial justice**

PHAs with Better Criminal Records Policies

New York City Housing Authority – Family Reentry (Pilot) Program

- For individuals who have been released in the last 3 years who want to be reunited with their families currently in public housing
- Out of 85 participants, only 1 had been convicted of a new charge

Housing Authority of New Orleans – New Criminal Record Policy

- Created a 3-person panel to review all applicants with criminal history
- Added transparency to the process
- Narrowed the types of criminal activity, and moved applicants to “further review” rather than “denial”

Practical Tips



Get in touch!

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The Impact of Fair Chance Ordinances and Nuisance and Crime-Free Ordinances On Survivors of Domestic Violence

Lisa Sitkin
Senior Staff Attorney
National Housing Law Project

- **Fair chance ordinances**
 - What they are
 - Key elements
 - Related policies
 - Practice tips and resources
- **Nuisance and crime-free ordinances**
 - What they are
 - Impact on DV survivors
 - Practice tips



What is a fair chance ordinance?

- **An ordinance enacted by a local jurisdiction (usually a city or county) in order to reduce barriers to housing for people who have had contact with the criminal justice system.**
- **Generally, a fair chance ordinance creates rules for screening of prospective tenants that limit the use of criminal records by landlords.**

Key Features of a Fair Chance Ordinance

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- **Scope of coverage**
- **Restrictions on screening for criminal history**
- **Procedures for tenant screening**
- **Enforcement and remedies**
- **Implementation**
- **Data collection**



- **First-in-time ordinances**
- **Portable tenant screening reports**
- **Protection against source-of-income discrimination**
- **Administrative plans**



Practice Tips and Resources

- Preemptive “self-screening”, review and correction of background check info (when possible)
- **Get to know your local ordinance**
- Report violations and utilize available enforcement tools
- **Consult NHLP publications:**
 - [An Affordable Home on Reentry](#)
 - [Fair Chance Ordinances: An Advocate’s Toolkit](#)

What is a nuisance or crime-free ordinance?

- **A local ordinance that imposes penalties on tenants and/or landlords for activities occurring at a rental property.**
- **Specifics vary by jurisdiction, but these ordinances generally have one or more of the following elements:**
 - **Requirements or penalties for landlords that lead to evictions** for a wide range of criminal activity, from serious offenses to non-criminal ordinance violations.

Elements of crime-free ordinances (cont'd)

- **Revocable rental licenses** for landlords/tenants
- **Crime-free lease addendum** that makes criminal activity of tenants, household members and guests a lease violation
- **Criminal background checks**, usually w/o specific criteria restricting type or age of criminal activity
- **Penalties** for exceeding a certain number of police or emergency assistance calls at a unit or property

Impacts on DV Survivors

- *Studies have shown that these ordinances have a disparate impact on DV survivors*
- **Attempt to get help → eviction and possible homelessness**
- **Wrongful arrest of survivor → eviction and possible homelessness**
- **Neighbor calls police → eviction and possible homelessness.**

Impacts on DV Survivors (cont'd)

- **Eviction records cause long-term problems finding other housing**
- **Undermine faith that “the system” can or will hold the abuser accountable**
- **Reinforcing abuser’s messaging and intensifying sense of isolation and hopelessness**
- **Demonstrate lack of community support for protecting survivors**



- **How to determine if one of these ordinances is in effect in your community**
- **Analyzing an ordinance**
- **These ordinances may violate:**
 - Fair Housing Act
 - State & local laws
 - Violence Against Women Act (VAWA)
 - U.S. Constitution (First Amendment right to petition government; due process)
- **Communicate with law enforcement and local government officials**

- [*ACLU Women's Rights Project: Housing Policy and Local Ordinances*](#)
- [*NHLP: Nuisance and Crime-Free Ordinances Initiative*](#)
- [*Emily Werth, Sargent Shriver National Center on Poverty Law, The Cost of Being "Crime-Free": Legal and Practical Consequences of Crime Free Rental Housing and Nuisance Property Ordinances \(Aug. 2013\)*](#)
- [*Cleveland State University and ACLU of Ohio, Who is a Nuisance? Criminal Activity Nuisance Ordinances in Ohio \(Nov. 2017\)*](#)

Q & A

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Thank You!

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