

# Win-Win: Equipping Housing Providers to Open Doors to Housing for People with Criminal Records



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# Introduction

**Unfortunately, criminal history checks are a typical part of the housing application processes, and many people with records are declined housing opportunities they would otherwise be a good fit for.<sup>1</sup>**

In Illinois, nearly 5 million adults, 50% of the population, are estimated to have an arrest or conviction record. Housing is foundational for employment success, family stability, and overall well-being.

For a housing provider, translating the desire to improve housing opportunity for people with records into concrete policies and practices can be a challenge. For providers who are putting out fires each and every day at their properties, slowing down to develop new approaches may be difficult. The purpose of Win-Win is to recommend a number of policies and practices—ranging from small changes to the more robust—that housing providers can adopt and adapt, in whole or in part, to increase housing opportunities for people with criminal records.

In order to create concrete recommendations, Heartland Alliance consulted with a number of affordable housing developers and Cabrini Green Legal Aid's Leadership Council, which brings together people with criminal records to advance social change. We also worked with experts in the field and researchers to round out our recommendations.

While we hope there are valuable takeaways for any housing provider in this guide, the recommendations are targeted at affordable housing providers whose units typically do not have services attached. These providers play a key role for people with records, who are frequently leaving reentry programs and need to find quality housing they can afford.

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<sup>1</sup> Avery, B., Emsellem, M., Hernandez, P. (2018, November). Fair change licensing reform: Opening pathways for people with records to join licensed professions. New York, NY: National Employment Law Project.

# Methodology

**Our goal for Win-Win was to develop user-friendly guidance about the use of criminal records in screening and housing applicants that reflects existing research and best-practices and incorporates navigating subsidized housing rules, community perception, and related challenges.**

**To that end we engaged in the following activities:**

- 1. Legal Review:** Identified legal barriers to housing for people with criminal records (i.e., registries, subsidized housing rules).
- 2. Literature Review:** Researched existing evidence and best practice models for screening and housing people with criminal records.
- 3. Policy Review:** Assessed policy documentation to identify how affordable housing developers, HUD, public housing authorities, or other funders screen applications for criminal history.
- 4. Impacted Population Input:** Learned from people with criminal records about their housing experiences and their recommendations for policy and process changes.
- 5. Affordable Housing Roundtables:** Gathered information on affordable housing practices, concerns, and pressures related to providing housing to people with criminal records.
- 6. Key Informant Interviews:** Interviewed affordable housing staff about serving individuals with records to draw on their deep expertise and to vet model policies and practices.

## Scope

**We focused the scope of the project in two ways:**

- Affordable housing versus market rate because of the deeper housing needs of people with criminal records who have lower incomes.
- People with criminal records broadly as the criminal record itself is a profound barrier.



## +Reentry Housing Needs & Support Housing

People reentering communities directly from incarceration need additional housing supports, specialized models, and policy interventions. They have thin credit files, tenuous connections to support networks, limited employment opportunities, and often have little income, all of which contribute to housing instability.<sup>2</sup> Individuals often feel these challenges profoundly during critical moments of time for their transition, when we know housing helps reduce recidivism and is critical to building stability. Supportive housing, affordable housing combined with a suite of supportive services, is a particularly crucial intervention for people reentering communities who have histories of homelessness, behavioral health concerns, and disabilities.<sup>3</sup> Housing providers value ongoing services or case management to help residents succeed in remaining stably housed. They indicated that the provision of ongoing services, along with having a person to call if there are any problems that arise, increased the success of housing people reentering communities from incarceration. Unfortunately supportive housing is a limited resource, and there is not enough funding be invested in service support. On top of the recommendations included in this report that are designed to broadly increase housing opportunities for all people with criminal records, significant attention needs to be paid to increasing specialized housing and supports for reentry success.

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<sup>2</sup> The Federal Interagency Reentry Council. (August 2016). A Record of Progress and a Roadmap for the Future. <https://csgjusticecenter.org/wp-content/uploads/2017/01/Housing.pdf>.

<sup>3</sup> The Urban Institute. (August 2012). Supportive Housing for Returning Prisoners: Outcomes and Impacts of the Returning Home—Ohio Pilot Project. <https://shnny.org/uploads/RHO-Urban-Institute-2012.pdf>

# The Interplay of Housing with People who have Criminal Records

Individuals with criminal records need what we all need: decent, safe, and affordable housing. Unfortunately, the stigma of a criminal record can last a lifetime, and can stand as a barrier to housing opportunities due to policy, practice and bias.

## Being Denied Housing Because of a Criminal Record is Common and the Scale is Significant

In Illinois, nearly 5 million adults are estimated to have an arrest or conviction record, which act as substantial barriers to work, housing, and well-being.<sup>4</sup> Some of these records are for minor public order offenses, and some are years old. And, unfortunately even charges that have been dismissed can show up on background checks. Rental housing application processes often assess for criminal records and very often screen people out, regardless of what the crime was, when it happened, or if a person was convicted. As a result, for individuals with criminal records, finding a place to live can be extremely challenging.

Due to racial disparities embedded in the justice system, there is a significant overrepresentation of people of color with criminal records.<sup>5</sup> Deeply troubling, “the presence of a criminal record can multiply other forms of disadvantage, deepening racial, class, and gender divides.”<sup>6</sup> These divides are amplified when people are denied housing due to a criminal record. Surveys of people with criminal records reinforce the reality of discrimination in housing; the Ella Baker Center for Human Rights found that 79% of survey respondents had been denied housing due to a criminal record<sup>7</sup>, and Roosevelt University found similar rates for people reentering communities in Chicago.<sup>8</sup>

## There is Limited Evidence that Criminal Records Screening is Effective at Managing Risk

On the surface, “exclusions based on criminal records ostensibly protect existing tenants.”<sup>9</sup> Housing providers typically justify screening for criminal histories under the assumption that past criminal behavior is a predictor of future criminal behavior, and specifically that individuals holding criminal records are likely to “threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.”

<sup>4</sup> Avery, B., Emsellem, M., Hernandez, P. (2018, November). Fair change licensing reform: Opening pathways for people with records to join licensed professions. New York, NY: National Employment Law Project

<sup>5</sup> The body of literature supporting this claim is large and conclusive. For a few examples, Nellis (2016) quantifies the disparity nationally and Balko (2018) provides a well-organized repository of studies.

<sup>6</sup> Roosevelt University Policy Research Collaborative, BPI. (2018) No place to call home: Navigating reentry housing in <sup>7</sup> Chicago. <https://www.bpichicago.org/wp-content/uploads/2018/09/No-Place-To-Call-Home.pdf>

deVuono-Powell, S., Schweidler, C., Walters, A., and Zohrabi, A. (2015) Who pays? The true cost of incarceration on families. Oakland, CA: Ella Baker Center, Forward Together, Research Action Design.

<sup>8</sup> Ibid

<sup>9</sup> Human Rights Watch. (2004) No second chance: People with criminal records denied access to public housing. <https://www.hrw.org/reports/2004/usa1104/usa1104.pdf>



For the most part, the evidence is not on the side of criminal past as a predictor of a criminal future. Social science consistently finds that as time passes after their initial convictions, people with criminal records generally converge after several years to the same risk of committing a crime as those who do not have a criminal record.<sup>10</sup> "Housing screening policies are so arbitrary, overly broad, and unnecessarily harsh that they exclude people who are law-abiding, as well as others who may never have presented any risk in the first place."<sup>11</sup>

It is typical for housing providers to deny people with serious convictions housing because of the assumption that the seriousness of the crime itself will mean that the applicant poses a greater risk. Evidence, however, does not always bear out those assumptions. For example, property managers routinely bar people with murder convictions from living in their developments. But studies suggest that people with murder convictions have extremely low recidivism rates and almost never recidivate with another violent crime. A 2011 study of 368 people convicted of murder on parole found that only six, or 1.6 percent, returned to prison with a felony conviction within three years. None of these convictions were for a violent offense.<sup>12</sup> And a new study of over 10,000 tenants found that "most types of criminal offenses do not significantly increase a household's likelihood of a negative housing outcome when other observable factors are held constant."<sup>13</sup> These results illustrate that a wide variety of factors contribute to housing outcomes, and they challenge some common misperceptions about the importance of criminal background in determining the probability of a negative housing outcome.<sup>14</sup>

When housing providers are determining whether a particular offense should be considered when offering housing, the provider should challenge any assumptions without evidence behind them and limit its inquiry to only those convictions that actually increase risk on the property.

## **Most Crimes Are Not Committed At or Near the Residence of the Person who Committed the Crime**

When property managers are weighing the risks involved with taking on a tenant with a criminal history, they may discount the importance of location. The body of laws governing what types of offenses justify denial or eviction from federally assisted housing is rich with references to "the premises"; concern for a crime's threat to the "health, safety, or right to peaceful enjoyment of the premises" is a universal theme throughout the regulations.<sup>15</sup> Although plenty of research points out that the likelihood of a crime being committed rises as a person gets closer to home,<sup>16</sup> often missed is the fact that most crimes are not committed near the residence of the person committing the crime.

<sup>10</sup> Kurlychek, Brame, and Bushway (2006); Blumstein and Nakamura (2009); DeWitt, Bushway, Siwach, and Kurlychek (2017)

<sup>11</sup> Human Rights Watch. (2004) No second chance: People with criminal records denied access to public housing.

<sup>12</sup> Brodheim, M. (2011, July 15) Paroled killers rarely re-offend. New York, NY: Prison Legal News.

<sup>13</sup> Warren, C (2019, January) Success in housing: How much does criminal background matter. Saint Paul, MN: Wilder Research.

<sup>14</sup> Ibid

<sup>15</sup> See, for example, 24 CFR § 982.553(a)(1)(ii), 24 CFR § 966.4(f)(12), or [24 CFR § 5.855](#)

<sup>16</sup> See Bernasco and Nieuwebeerta (2004) and Bernasco (2010), for example.

## Fair Housing Rules Can Protect People with Criminal Records

On April 4, 2016, HUD issued guidance recognizing uses of criminal record barriers in housing may have a disparate impact on communities of color, in violation of the Fair Housing Act.<sup>17</sup> While fair housing law does not prohibit housing providers from considering criminal records during the tenant screening process, it does require the practice to be narrowly tailored. The screening practice must be “necessary to serve a substantial, legitimate, nondiscriminatory interest of the housing provider” and that interest cannot be accomplished by another practice that has a less discriminatory effect.<sup>18</sup> A housing provider must be able to show that its policy or practice of making housing decisions based on criminal history actually assists in protecting resident safety and/or property. “Generalizations or stereotypes that any individual with an arrest or conviction record poses a greater risk” do not comply.<sup>18</sup>

## Criminal Records and Poor Credit Go Hand in Hand,<sup>20</sup> Compounding Barriers to Housing

Many individuals with criminal records also struggle with no credit,<sup>21</sup> thin credit, or poor credit, which is a problem for housing access because housing providers commonly consider both criminal history and credit history in their tenant assessment. Many people who have been involved with the justice system have no credit as a result of time incarcerated, and have low-incomes which are further eroded if they spend time incarcerated. So, “by checking both criminal background and credit histories, housing provider practice may discriminate doubly against individuals who likely had few social advantages to begin with.”<sup>22</sup>

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<sup>17</sup> United States Department of Housing and Urban Development (2016, April 4) Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate - Related Transactions [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF)

<sup>18</sup> United States Department of Housing and Urban Development (2016, April 4) Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate -Related Transactions.

<sup>19</sup> Ibid

<sup>20</sup> Roosevelt University Policy Research Collaborative, BPI. (2018) No place to call home: Navigating reentry housing in Chicago.

<sup>21</sup> See Aneja and Avenancio-León (2019) for a quantitative examination of this phenomenon

<sup>22</sup> Ibid

# Starting Point for Affordable Housing Providers

Affordable housing providers shared their practices, concerns, and pressures related to providing housing to people with criminal records. The following are some key lessons from those conversations.

## 1. Federal requirements regarding housing and criminal records cause confusion

Some forms of federally assisted housing are subject to limited criminal record screening requirements. For those federally assisted programs that are subject to a screening requirement, providers are typically only prohibited from renting to individuals with convictions for producing methamphetamines on federally assisted properties or which place one on the lifetime sex offender registry. Programs like the Low Income Housing Tax Credit Program have no mandatory prohibitions. But because rules differ by program, there is significant confusion about what the rules actually are.

The housing providers we worked with found it difficult to confidently translate HUD's 2016 fair housing guidance regarding screening applicants with criminal records into real terms. The result is that many housing providers are working to create better opportunities for people with records, but are not always confident about what steps to take in order to move forward.

See the housing provider tool in the appendix, which outlines the statutory requirements pertaining to criminal records by assisted housing program type. This provides clarity at-a-glance as to what is required by law.

## 2. Affordable housing providers are accountable to a wide variety of stakeholders, from tenants to investors

Affordable housing providers are accountable to a wide range of stakeholders, which can complicate their ability to create innovative tenant screening policies. During our conversations, we heard the following:

- **Community Pressure:** Affordable housing providers reported that they frequently face obstacles from neighbors or community organizations that do not want affordable housing in their neighborhood, typically out of fear or prejudice about the tenants of affordable housing. This NIMBY (Not in my Backyard) phenomenon can mean added scrutiny—from neighbors, police, and city officials—of a housing provider's tenant screening policies.

- **Tenant Perception:** Tenants do not always get along. Housing providers reported that some tenants are quick to blame resident issues that have nothing to do with criminal activity or a background on the residents with records.
- **Insurer and Investor Requirements:** Housing providers reported that both their insurers and their tax-credit investors have required that their screening policies ban applicants with certain convictions, such as arson, making it more difficult for the provider to implement a more limited background screening policy.
- **Regulatory Bodies:** Affordable housing providers are subject to significant oversight and many of their policies must be approved by various regulatory bodies. Providers shared that it can be arduous working with regulators like the Illinois Housing Development Authority to implement new or innovative changes to their Tenant Selection Plan, which may ultimately result in providers simply adopting template policies.

### 3. Affordable housing provider experiences do not always align with conventional approaches to tenant screening

Housing provider's expectations of a successful tenancy are commonsense:

- Timely payment of rent and utilities,
- Not interfering with the health or safety of other residents,
- Ability to work with property management to facilitate tasks like basic maintenance/repairs, and
- Not unreasonably interfering with neighbors' use and enjoyment of the property.

Among the most illuminating reflections of the housing providers we worked with is that conventional wisdom regarding criminal records, which cautions against renting to those with a record of a serious offense, does not align with their experience. In fact, many of the property managers reported that some of their best tenants were people with serious felonies in their background. Frequently, their larger concerns were about applicants who display multiple minor offenses in the recent past—which they suggested tended to indicate that the applicant may have difficulty fulfilling their responsibilities as a tenant without additional services and supports. Nonetheless, the providers we talked with were committed to providing housing opportunity and made clear that tenants with a multiple offenses can be successful tenants. They reported that they offer housing to someone with a recent pattern of criminal activity if other indicators that the applicant can successfully maintain their tenancy were present, such as no history of eviction, a clear ability to pay rent, and a suitable credit history.

## **4. Transitional housing and supportive services matter for successfully housing people with criminal records as they reenter communities**

Across the board, the housing providers lamented the lack of supportive housing and case management resources available for people at and after reentry. Providers said that participating in a transitional housing or similar program may assuage concerns they have with criminal history and hoped that in the future more resources would be available for service providers from those programs in order to offer residents continued support services after move-in to an affordable housing development.

## **5. Timely lease-up is an important driver of housing provider policy and practice**

Housing providers told us that applicants with records may ultimately lose housing opportunities not because of their record, but because their application may take longer to process as housing providers evaluate the record. In the meantime, another applicant may be approved and offered the unit.

In the employment arena, criminal justice and reentry advocates have long pushed for an individualized assessment of an applicant and the ability for the applicant to provide additional or mitigating information about their record. The same general framework has been applied by advocates in the housing context. But, while it is critically important to provide for an individual assessment and opportunity to offer mitigating evidence given the scant and sometimes misleading information that a criminal record provides, employment screening and tenant screening are fundamentally different. The process of hiring typically takes longer than the process of leasing a unit. And while an employer may be looking for the best candidate for the job, a housing provider is looking for the first acceptable tenant for the unit. Each day a housing provider does not lease up it loses money.

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Affordable housing providers generally enter into this space with good intent. They want good tenants, their units filled, and for this all to happen efficiently and safely. Unfortunately, the confusing statutory environment, combined with external pressures, has led to application and leasing practices that effectively limit opportunities for people with criminal records rather than opening doors. With a little more information and support, however, these barriers can be overcome. The recommendations that follow are designed to do just that.

## Background Checks/Criminal History Reports

A criminal background check can reveal extensive information about an individual's history of justice system involvement. These background checks may contain "case numbers, descriptions of the crime, type/sentencing class, plea (guilty/not guilty), and disposition (punishment information, including length of sentence)."<sup>23</sup>

### There are Restrictions on the Use of Background Checks/Criminal History Reports

The use of background checks is regulated by the Fair Credit Reporting Act. Housing providers must follow two basic requirements:

1. First, housing providers and landlords must obtain permission to conduct a background check from the applicant.
2. Second, they must disclose to the applicant if the housing provider is taking an "adverse action," based on the background check, such as refusing to rent, requiring a co-signer, etc.<sup>24</sup> Adverse actions must be communicated and information about the consumer reporting agency used must be provided to the applicant so they can request a copy of the criminal history report.

Nothing prohibits a housing provider from providing a copy directly to the applicant to make it easier for the individual to address any errors immediately.

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<sup>23</sup>Roosevelt University Policy Research Collaborative, BPI. (2018) No place to call home: Navigating reentry housing in Chicago.

<sup>24</sup>Federal Trade Commission (2016, October) Using Consumer Reports: What Landlords Need to Know. <https://www.ftc.gov/tips-advice/business-center/guidance/using-consumer-reports-what-landlords-need-know>

## Criminal History Reports are often Riddled with Faulty Information

Despite their widespread use, criminal background checks routinely report errors—upending the lives of people looking for housing or jobs every year.<sup>25</sup> Cabrini Green Legal Aid specializes in providing services to people with records. Here are some of the most common background mistakes they see:

### Incomplete or Inaccurate Information

A criminal history report may not show the outcome (“disposition”) of a case or may misreport aspects of the case. The record might show a charge of armed robbery, not indicate whether someone was convicted or whether the charges were dismissed.

### Outdated Information

When background check companies buy circuit clerk records in bulk, the records are not always updated to show what happened after the initial close of the case. Records that are expunged or sealed, or changed after the outcome of the case (e.g., a conviction was vacated) will not be reflected.

### Duplicative Information

There are times that the same information is repeated multiple times on a criminal history report, making it appear that there are more cases than actually exist. Housing providers should make sure to read the case numbers to distinguish when there are not multiple cases.

### Mistaken Information

Public information is usually maintained by name and date of birth. When a name is common, there is a higher likelihood of associating the wrong person with a criminal case.

## New Options May be Needed to Increase Accuracy and Speed of Check for Housing Providers

A background check from a government entity is more likely to be accurate and up-to-date, including properly excluded convictions that have been sealed. But, typical reports from government entities like the Illinois State Police require fingerprinting and can take several days to prepare. It may be worth exploring creation of a special housing provider specific background check with the State Police. If they used Social Security Numbers in lieu of fingerprinting, records may be able to be turned over more quickly to meet the leasing time pressures while at the same time improving the accuracy of the reports and the decisions made with that information.

<sup>25</sup> Yu, P.& Dietrich,S.M.,(2012, April) Broken Records: How Errors by Criminal Background Check Companies Harm Workers and Businesses. Boston, MA: National Consumer Law Center. <https://www.nclc.org/images/pdf/pr-reports/broken-records-report.pdf>

## Recommendations for Affordable Housing Providers

The following recommendations are meant to highlight key ways that affordable housing developers and property managers can improve housing opportunity for people with criminal records, while at the same time maintaining safe and decent housing for their tenants and the community at large.

### Recommendation 1: Challenge Convention and Promote Equity by Not Considering Records

As set forth throughout this brief, there is little evidence that background check screening is effective and background check information is frequently inaccurate. Given that the criminal justice system disparately impacts communities of color, use of criminal records in housing decisions may also raise fair housing questions. We, therefore, recommend that housing providers not consider a criminal history at all, or if review is mandated by law, limit use of records to only to the extent required by law.

### Recommendation 2: If You Determine You Must Consider Records, Limit the Inquiry

Given the problematic nature of using criminal history information to evaluate tenants, property managers who decide to consider criminal history should do so thoughtfully and responsibly: a) they should consider only convictions; b) they should create a policy that specifically identifies what convictions are relevant to a decision to offer housing; and c) they should ensure that the person deciding whether to offer housing only sees the conviction information that has been determined to be relevant under their policy, so that they are not inadvertently influenced by arrest or convictions that do not relate to the offer of housing.

### Check Local and Federal Laws

It is important to note that these recommendations do not get into detail on obligations under the Fair Housing Act, which housing providers must also follow.

In addition, state and local policies are changing and should be reviewed regularly. For example, a new Just Housing amendment to the Cook County Human Rights Ordinance requires that housing providers not consider certain aspects of criminal records—such as arrests, juvenile records, and sealed and expunged records—when making housing determinations. For applicants with a conviction on their record, housing providers will need to conduct an individualized assessment and consider factors such as the nature of the offense and the time that has passed since the offense.



## **A. Policies for Screening Criminal History Should Prohibit Consideration of Arrests, Juvenile Records, and Sealed or Expunged Records**

If a housing provider decides to consider criminal records, arrests, juvenile records, sealed or expunged records should not be reviewed at all during the application process.

- Arrests, dismissed charges, and other dispositions not resulting in conviction: The United States Department of Housing and Urban Development (HUD) has issued a Fair Housing guidance making clear that arrests should not be used in tenant screening as proof of any criminal activity.<sup>26</sup>
- Juvenile records: Juvenile records are confidential in many circumstances and should not have bearing on someone's application for housing as an adult.<sup>27</sup>
- Sealed or expunged records: Sealed or expunged records are supposed to be shielded from public view, including housing providers generally. Sometimes, however, sealed or expunged records are nonetheless reported by background check companies. Housing providers should not consider a record that they know to be sealed or expunged. An independent reviewer, as recommended below, can help ensure that housing decision-makers are not considering records that are not intended to be seen by the general public.

## **B. Policies for Evaluating Criminal History Should be Targeted and Reflect the Housing Provider's Specific and Legitimate Concerns with Criminal History**

If criminal records are going to be considered, policies for screening individuals using conviction information should address the specific and legitimate concerns of a housing provider. Housing providers should establish a framework for considering records. The framework should clearly identify only those convictions that are relevant to the provider's specific concerns. Doing so will help account for unconscious bias, and will standardize the housing provider's process so that all applicants are treated equally. The framework should begin with a presumption that, generally, a criminal record is not relevant to a determination about whether to offer housing and that the provider will only consider convictions specifically identified previously as a part of a standardized policy.

<sup>26</sup> United States Department of Housing and Urban Development (2016, April 4) Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions. [https://www.hud.gov/sites/documents/HUD\\_OGCGUIDAPPFHASTANDCR.PDF](https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF)

<sup>27</sup>National Juvenile Justice Network. (August 2016). Safeguarding the Confidentiality of Youth in the Justice System: Recommendations and Resources. <http://www.njjn.org/our-work/confidentiality-of-youth-in-justice-system-safeguards>

## Record Review Framework at a Glance

Designation	Look-Back	Conviction Type	Evaluation Process
<b>Category 1:</b> Statutory Bar	Lifetime	Federal, state, or local law requires the housing provider to reject the applicant.	Automatic denial of admission
<b>Category 2:</b> Convictions about which housing provider has specific concerns	Maximum 3 years (any offense in this category occurring prior to 3 years from the date of application NOT to be considered)	Identify specific felony offenses with which the housing provider may have specific concern regarding resident safety. This list should be finite and avoid broad categories like "violent offenses".	<p>Assess only those Category 2 offenses that occur during the look-back period.</p> <p>Provide the applicant the opportunity to provide mitigating information.</p> <p>Evaluate Category 2 convictions and any additional information provided by the applicant using previously established, standardized criteria, such as the following:</p> <ul style="list-style-type: none"> <li>a) whether the circumstances indicate a probable risk to resident safety or the property,</li> <li>b) evidence of rehabilitation, and</li> <li>c) time since the incident/offense.</li> </ul>

## Category 1: Convictions for which an Applicant is Legally Barred.

Subsidized housing includes very few actual prohibitions for renting to people with a criminal history—typically only convictions for producing methamphetamines on federally assisted properties or which place one on the lifetime sex offender registry. Programs like the Low Income Housing Tax Credit Program have no mandatory prohibitions. See the housing provider tool in the appendix for more information. Automatic, absolute, lifetime barriers should be limited to those offenses with a legal prohibition. For every other offense, the applicant should be afforded a holistic and individualized assessment.

Insurers, investors, and regulatory bodies may put undue weight on criminal history information and require a provider to automatically deny an individual with certain convictions on their record. We encourage providers to try and work with these partners to—in the least—allow for an individualized, “Category 2” type assessment of an applicant’s record, rather than a blanket ban for such offenses. We also recommend providing these partners with information regarding a housing provider’s fair housing obligations.

## Category 2: Specify Convictions of Particular Concern [within the Last 3 Years]

For Category 2, housing providers should specifically identify offenses that they have determined present a particular risk to safety and embed them clearly in their policies. Providers should avoid broad categories like “violent offenses,” which can include a wide range of activity and instead create a more targeted list with clear and direct ties to resident safety. Category 2 offenses should be limited to felony offenses.

For this category, the following approach should be taken:

1. Adopt a look-back period of no more than three years.<sup>28</sup>
2. If an individual has a conviction for a designated offense in this category, inform the applicant that their application is in another stage of review and the specific conviction(s) at issue.
3. Provide the applicant a copy of their criminal history report.
4. Inform the applicant that they may provide additional information or mitigating circumstances regarding the convictions under review. Provide no less than 48 hours to provide that information.
5. Review the individual’s information using a standard criteria, such as:
  - a. whether the circumstances of the offense indicate a probable risk to resident safety or the property;
  - b. evidence of rehabilitation; and
  - c. the time since the offense

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<sup>28</sup> The [Chicago Housing Authority](#) and other providers have instituted limited look-back periods of three years; adopting a three-year look-back is in line with other local providers.

## Recommendation 3: Embed the Policy into a Transparent, Fair and Individualized Process

In addition to spelling out an explicit policy framework for what records will be reviewed and why, housing providers will also need to make intentional changes to practices and processes.

### A. Train those designated to review criminal history reports about how to read a criminal history report.

Evaluating criminal history reports, reentry programs and other forms of mitigating evidence, and assessing housing readiness is not intuitive. Indeed, criminal history reports can be confusing and difficult to read. For more information see the housing provider tool in the appendix, How to Read a Criminal History Report. As a result, we recommend that housing providers:

- Provide clear instruction to staff reviewing and determining whether to offer housing about how to evaluate criminal history information according to the housing provider's framework, including how to evaluate mitigating circumstances, evidence of rehabilitation, and other specified criteria.
- Train property management staff about the criminal justice system and reentry so that they better understand the system of records and reentry.

## EVALUATION OF HOUSING READINESS

Housing providers have indicated that a recent criminal history may indicate that an applicant is in need of services or other supports to successfully maintain his or her tenancy. However, if an applicant had a recent criminal history, but otherwise had a strong rental history, stable employment, or good credit history, they would likely offer the individual a unit. So to the extent that certain offenses in the past year may indicate an applicant might have a difficult time successfully maintaining a tenancy, they should be evaluated through the lens of a broader evaluation of housing readiness (e.g., ability to pay rent, eviction history), as well as paired with evidence of rehabilitation or participation in a transitional housing or other program that helps prepare renters for housing without supports. These offenses alone should not be a basis to deny housing; and should inform services and service partnerships to set tenants up for success.

## B. Provide for an independent review of criminal history reports.

Criminal history reports may include information that is not relevant to a housing decision. Nonetheless, decision makers are human. A history of arrests and convictions that are not relevant to an offer of housing, and offenses occurring before the look-back period—none of which should be considered as part of a tailored analysis to address legitimate housing concerns—may influence a decision maker subconsciously, even if that information is not technically “considered” as part of the provider’s analysis. Housing providers should work to ensure an independent review of criminal history reports. This could be accomplished a number of ways:

- Designate staff who are not otherwise involved in the application decision to review criminal history reports. These designated staff should review the criminal history report and provide to the decision maker only that information relevant under the housing provider’s framework for considering a record.
- Work with the background check vendor so that the background report they produce only includes the relevant convictions (within the applicable look-back periods) under the provider’s background screening policy.

The aim of this practice is to limit the criminal history information that the decision maker sees to the specific convictions that are relevant under the provider’s screening policies, helping to ensure unconscious bias does not affect the final decision about whether to offer housing.

## C. Be transparent with applicant about additional review due to criminal record and share details.

Notify applicant that criminal record for a designated offense pushed their application into another stage of review and indicate the specific conviction(s) at issue. Provide the applicant a copy of their criminal history report.

## D. Applicants should be provided the opportunity to correct and provide additional information about their criminal history before they are issued a denial.

Providers should create a “phase 2” or additional stage of review if the applicant has a criminal history relevant to determining whether to offer housing.

### STRUCTURE PROCESS TO HEAD OFF INFLUENCE OF IMPLICIT BIAS

It is important to create these checks and balances to head off the negative impacts of implicit bias. Implicit bias refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. These biases, which encompass both favorable and unfavorable assessments, are activated involuntarily and without an individual’s awareness or intentional control. The implicit associations we harbor in our subconscious cause us to have feelings and attitudes about other people based on characteristics such as race, ethnicity, age, and appearance.<sup>29</sup> Property managers are not immune to this and may make tenant decisions based on factors having nothing to do with whether someone would be a good tenant.

<sup>29</sup> The Ohio State University Kirwan Institute for the Study of Race and Ethnicity (2015) Understanding Implicit Bias.

Inform the applicant that they may provide additional information or mitigating circumstances regarding the convictions under review. Provide no less than 48 hours to provide that information.

**E. Applicants should keep their spot on any waitlist during this individual assessment process.**

**F. If the applicant is denied housing, they should be informed in writing of that decision.**

## Project-Based Section 8 Property Review Framework

Housing providers adopting a tailored policy for evaluating criminal convictions should identify where the law prohibits the provider from renting to an individual with a certain conviction and list specifically any offenses the provider has determined are of particular concern. This chart is an example of how a project-based Section 8 development might distinguish different convictions based on the law and their determination of risk about particular offenses.

Designation	Look-Back	Coviction Type
<b>Criminal History Information Not Considered</b>	None	Arrests, Dismissed Charges, Juvenile Adjudications, Sealed or Expunged Recorded, and Convictions of Any Offense Not Identified in Category 1 or 2
<b>Category 1:</b> Automatic Denial of Admission	Lifetime	Conviction that results in a lifetime sex offender registry
<b>Category :</b> Convictions about which property management has specific concerns	3 years	Covictions for: -Arson (felony) - Violation of the Illinois Street Gang and Racketeer Influenced and Corrupt Organizations Law (felony) -Armed Violence (felony)

Using the chart above, if an applicant had a twenty-year-old armed robbery conviction, a two-year-old arson conviction, and an arrest last year for possession of marijuana, an independent reviewer would only provide information about the arson conviction to the decision maker. In this way, the decision-maker cannot be unintentionally influenced by the material in a background report that is outside the scope of what a provider considers under its screening policy.

## **Recommendation 4: Change Related Policies and Practices that May Disproportionately Exclude People with Criminal Records: Eviction History, Credit History, and Application Fees**

### **A. Consider Only Relevant Eviction History.**

Eviction histories are frequently an important part of a housing provider's evaluation of an applicant. But eviction histories can be as problematic as criminal record histories—they are frequently misleading and disproportionately affect families of color.<sup>30</sup> We, therefore, recommend housing providers take a similarly targeted approach to eviction histories:

1. Limit consideration to evictions during the prior three years;
2. Consider only evictions where the tenant was ordered by a court to be evicted (not dismissed cases or cases where the tenant prevailed); and
3. Provide the applicant the opportunity to provide additional or mitigating information about the eviction case.

### **B. Target the Use of Credit History to Housing: Frequently, people with criminal records may have a limited credit history or have suffered financial hardship.**

1. Evaluate a credit history holistically and focus on information that is relevant to housing; and
2. Do not refuse housing based on a lack of credit history.

### **C. Assess Application Fees and Background Check Documentation.**

The costs of applying for housing can be onerous, especially for people with criminal records who may be routinely denied housing because of their record. Therefore housing providers should:

1. Consider whether charging an application fee is necessary.

Many affordable housing providers choose not to charge an application fee in recognition that people in need of affordable housing may have limited resources for those fees. And people with criminal records have reported that application fees, in conjunction with unclear criminal history policies, can deter them from applying to housing because they don't want to throw their money down the drain.

2. If an application fee is necessary, limit the fee charged to the actual cost of any credit or background checks used to screen the applicant.

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<sup>30</sup> Park, S. (2017, March 30). , Unfair Eviction Screening Policies are Disproportionately Blacklisting Black Women. American Civil Liberties Union...

For people with records, finding a place to live can mean multiple housing applications. When application fees are high, the cumulative effect for the applicant may be significant. For example, a single application fee ranging from \$30-50 may be affordable as a one-time fee for an applicant, but if the applicant must apply to five properties before finding a place to live, the total cost to that applicant may be between \$150-250 and ultimately mean less money available to pay for moving costs, a security deposit, or to meet the applicant's basic needs.

3. Provide a copy of any criminal record, tenant, or credit screening report directly to the applicant.

Providing an applicant with a copy of their credit or criminal screening report will allow the applicant to not only correct any inaccuracies with property management, but also may allow them to correct these problems with the reporting agencies for the future.

4. Create a clear and standard process for applicants to correct mistakes in credit checks, criminal history, or other screening reports.

Background checks frequently contain inaccurate information (see discussion above) and credit checks likewise have a high error rate (more than 1 in 5 consumers have a material error on their report).<sup>31</sup> Any fair application process should provide for the correction of these errors, including—if possible—holding the unit or spot on any waitlist while the information is corrected.

## **Recommendation 5: Take Affirmative Steps to Help People with Records Achieve Stability**

In addition to providing quality housing, a housing provider can play an instrumental role in helping individuals and families with records build long term stability. Some examples include:

### **A. Consider developing a program where tenants can enroll to have their rent payments reported to credit bureaus to help them build their credit after reentry.**

The Credit Builders Alliance, a non-profit organization dedicated to moving people from poverty to prosperity through credit building, provides resources and information for creating such a program.

### **B. Host a sealing or expungement summit to help residents clear their record.**

Organizations like Cabrini Green Legal Aid will work with local legal services offices to hold sealing and expungement summits, which can help tenants seal their criminal record, creating greater opportunities for jobs, education, and housing in the future.

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<sup>31</sup> Klein, A. (2017, September 28) The Real Problem with Credit Reports is the Astounding Number of Errors. Washington, DC: The Brookings Institute. . <https://www.brookings.edu/research/the-real-problem-with-credit-reports-is-the-astounding-number-of-errors/>



**C. Support tenants by inviting organizations that provide financial coaching to deliver services onsite, like Heartland Human Care Services.<sup>32</sup>**

**D. Partner with housing service providers.**

Transitional and supportive housing programs can help support people with records upon release from prison as they find jobs, recover from trauma, build new ties within the community, and help prepare individuals to maintain a tenancy without supports. A formal or informal partnership between housing providers who do not offer services and such programs can help ensure that people leaving transitional or supportive housing have affordable housing opportunities and supports that lead to housing success.

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<sup>32</sup> <https://www.heartlandalliance.org/assetbuilding/about-us/partner-with-us/>

## Beyond Housing Provider Action, Change is Needed

**Undergirding the challenge of improving housing opportunities for people with records is a broken and inequitable criminal justice system.**

- Without sentencing reform, reentry supports, and a rebalancing of our justice system, each year we will continue to see people struggling to rebuild their lives after incarceration.
- True housing opportunity for people with records will only occur with significant investments in supportive housing and reentry programming.
- The policies of funders and financiers also need to evolve. IHDA, HUD, and other tenant selection templates should be updated to reflect better screening practices for housing providers, including listing particular offenses of concern and incentivizing shorter look-back periods and individualized analysis of applicant circumstances.
- Insurers, investors, and regulators all have a role to play in improving housing opportunity. An education/engagement effort of these entities could significantly change the conversation for housing providers who may feel like they cannot push back on these entities successfully.

**We all play a role in opening up doors to opportunity. Join us in changing policy, process, and practice so that people with records have increased access to housing and safety and the stability that comes with it.**

## Housing Provider Tool: Criminal Record Screening Requirements for Federally- and Illinois-Assisted Housing Programs<sup>1</sup>

*Created by the Sargent Shriver National Center on Poverty Law*

	Convicted of producing meth at federally assisted housing	Lifetime registered sex offender	Evicted for drug-related activity on federally assisted property	Drug-related criminal activity	Violent criminal activity	Criminal activity that threaten health, safety, and peaceful enjoyment	Arson
Public Housing	Must deny admission <sup>2</sup>	Must deny admission <sup>3</sup>	Must deny admission (3 years unless rehabilitated) <sup>4</sup>	May admit <sup>5</sup>	May admit <sup>6</sup>	May admit <sup>7</sup>	Not specifically addressed by federal law
Housing Choice Voucher	Must deny admission <sup>8</sup>	Must deny admission <sup>9</sup>	Must deny admission (3 years, unless rehabilitated) <sup>10</sup>	May admit <sup>11</sup>	May admit <sup>12</sup>	May admit <sup>13</sup>	Not specifically addressed by federal law
Section 8 Moderate Rehab <sup>14</sup>	Must deny admission <sup>15</sup>	Must deny admission <sup>16</sup>	Must deny admission (3 years, unless rehabilitated) <sup>17</sup>	May admit <sup>18</sup>	May admit <sup>19</sup>	May admit <sup>20</sup>	Not specifically addressed by federal law
Project-Based Section 8	May admit <sup>21</sup>	Must deny admission <sup>22</sup>	Must deny admission (3 years, unless rehabilitated) <sup>23</sup>	May admit <sup>24</sup>	May admit <sup>25</sup>	May admit <sup>26</sup>	Not specifically addressed by federal law
Sections 202, 811, 221(d)(3), 236	May admit <sup>28</sup>	Must deny admission <sup>29</sup>	Must deny admission (3 years, unless rehabilitated) <sup>30</sup>	May admit <sup>31</sup>	May admit <sup>32</sup>	May admit <sup>33</sup>	Not specifically addressed by federal law
USDA Housing	May admit <sup>34</sup>	Must deny admission for Section 514/515 housing <sup>35</sup>	Must deny admission (3 years, unless rehabilitated) <sup>36</sup>	May admit <sup>37</sup>	May admit <sup>38</sup>	May admit <sup>39</sup>	Not specifically addressed by federal law
HOME	Criminal history not addressed by federal law <sup>40</sup>						
Low-Income Housing Tax Credit	Criminal history not addressed by federal law or state QAP <sup>41</sup>						
Shelter+ Care	Criminal history not addressed by federal law <sup>42</sup>						
Supportive Housing Program	Criminal history not addressed by federal law <sup>43</sup>						
Housing Opportunities for Persons with AIDS	Criminal history not addressed by federal law <sup>44</sup>						
Rental Housing Support (Ill.)	Criminal history not addressed by state law <sup>45</sup>						
Ill. Affordable Housing Tax Credit	Criminal history not addressed by state law <sup>46</sup>						

- <sup>1</sup> This chart covers regulations regarding past activity (e.g., convictions, evictions, and past criminal activity). In cases of where the applicant is currently engaged in illegal drug use or alcohol abuse, the housing provider must deny admission in the following federal subsidy programs: public housing, Housing Choice Voucher, Project-Based Section 8, and Sections 202, 811, 221(d)(3), 236. : For a more detailed chart on federally-assisted housing programs, see National Housing Law Project, *An Affordable Home on Reentry*, pp. 26-28 app. 2B (2018), <https://www.nhlp.org/wp-content/uploads/2018/08/Reentry-Manual-2018-FINALne.pdf>.
- <sup>2</sup> “[A] public housing agency shall establish standards for occupancy in public housing dwelling units and assistance ... that permanently prohibit occupancy in any public housing dwelling occupancy by ... any person who has been convicted of manufacturing or otherwise producing methamphetamine on the premises in violations of any Federal or State law.” 42 USC 1437n(f); see also 24 CFR 960.204(a)(3).
- <sup>3</sup> “[A]n owner of federally assisted housing shall prohibit admission to such housing for any household that includes any individual who is subject to a lifetime registration requirement under a State sex offender registration program.” 42 USC 13663(a); see also 24 CFR 960.204(a)(4).
- <sup>4</sup> “Any tenant evicted from federally assisted housing by reason of drug-related criminal activity ... shall not be eligible for federally assisted housing drug the 3-year period beginning on the date of such eviction, unless the evicted tenant successfully completes a rehabilitation program approved by the public housing agency (which shall include a waiver of this subsection if the circumstances leading to eviction no longer exist.” 42 USC 13661(a); 24 CFR 960.204(a)(1).
- <sup>5</sup> “[I]n selecting among applicants for admission to the program or to federally assisted housing, if the public housing agency or owner of such housing (as applicable) determines that an applicant or any member of the applicant’s household is or was, during a reasonable time preceding the date when the applicant household would otherwise be selected for admission, engaged in any drug-related ... criminal activity ..., the public housing agency or owner may deny such applicant admission to the program or to federally assisted housing” 42 USC 13661(c)(1) (emphasis added).
- <sup>6</sup> “[I]n selecting among applicants for admission to the program or to federally assisted housing, if the public housing agency or owner of such housing (as applicable) determines that an applicant or any member of the applicant’s household is or was, during a reasonable time preceding the date when the applicant household would otherwise be selected for admission, engaged in any ... violent criminal activity ..., the public housing agency or owner may deny such applicant admission to the program or to federally assisted housing” 42 USC 13661(c)(1) (emphasis added); 24 CFR 960.203(c)(2).
- <sup>7</sup> “[I]n selecting among applicants for admission to the program or to federally assisted housing, if the public housing agency or owner of such housing (as applicable) determines that an applicant or any member of the applicant’s household is or was, during a reasonable time preceding the date when the applicant household would otherwise be selected for admission, engaged in any ... 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, the public housing agency or owner may deny such applicant admission to the program or to federally assisted housing” 42 USC 13661(c)(1)(emphasis added); 24 CFR 960.203(c)(2).
- <sup>8</sup> See endnote 2 for relevant statutory language from 42 USC 1437n(f).
- <sup>9</sup> See endnote 3 for relevant statutory language from 42 USC 13663(a); see also 24 CFR 982.553.
- <sup>10</sup> See endnote 4 for relevant statutory language from 42 USC 13661(a); see also 24 CFR 982.553.
- <sup>11</sup> See endnote 5 for relevant statutory language from 42 USC 13661(c); see also 24 CFR 982.553.
- <sup>12</sup> See endnote 6 for relevant statutory language from 42 USC 13661(c); see also 24 CFR 982.553.
- <sup>13</sup> See endnote 7 for relevant statutory language from 42 USC 13661(c); see also 24 CFR 982.553.
- <sup>14</sup> For purpose of this chart, this category includes housing provided under Section 8 SRO Moderate Rehab for Homeless.
- <sup>15</sup> See endnote 2 for relevant statutory language from 42 USC 1437n(f); see also 24 CFR 882.518.
- <sup>16</sup> See endnote 3 for relevant statutory language from 42 USC 13663(a); see also 24 CFR 882.518.
- <sup>17</sup> See endnote 4 for relevant statutory language from 42 USC 13661(a); see also 24 CFR 882.518.
- <sup>18</sup> See endnote 5 for relevant statutory language from 42 USC 13661(c); see also 24 CFR 882.518.
- <sup>19</sup> See endnote 6 for relevant statutory language from 42 USC 13661(c); see also 24 CFR 882.518.
- <sup>20</sup> See endnote 7 for relevant statutory language from 42 USC 13661(c); see also 24 CFR 882.518.
- <sup>21</sup> Where federal law prohibits admission of any person who has been convicted of manufacturing or producing methamphetamine on federally assisted property, the statute specifically refers to public housing authorities and omits other owners of federally assisted property. See 42 USC 1437n(f). For the relevant excerpt of the statute, see endnote 2.
- <sup>22</sup> See endnote 3 for relevant statutory language from 42 USC 13663(a); see also 24 CFR 5.854.
- <sup>23</sup> See endnote 4 for relevant statutory language from 42 USC 13661(a); see also 24 CFR 5.855.
- <sup>24</sup> See endnote 5 for relevant statutory language from 42 USC 13661(c).
- <sup>25</sup> See endnote 6 for relevant statutory language from 42 USC 13661(c); see also 24 CFR 5.855.
- <sup>26</sup> See endnote 7 for relevant statutory language from 42 USC 13661(c); see also 24 CFR 5.855.
- <sup>27</sup> Housing for the Elderly and People with Disabilities, Below-Market Interest Rate, and Rental Subsidies
- <sup>28</sup> Where federal law prohibits admission of any person who has been convicted of manufacturing or producing methamphetamine on federally assisted property, the statute specifically refers to public housing authorities and omits other owners of federally assisted property. See 42 USC 1437n(f). For the relevant excerpt of the statute, see endnote 2.
- <sup>29</sup> See endnote 3 for relevant statutory language from 42 USC 13663(a); see also 42 USC 13664 (defining “federally assisted housing” to include housing programs listed in this chart); 24 CFR 5.856.
- <sup>30</sup> See endnote 4 for relevant statutory language from 42 USC 13661(a); see also 24 CFR 5.854.
- <sup>31</sup> See endnote 5 for relevant statutory language from 42 USC 13661(c); see also 24 CFR 5.855.
- <sup>32</sup> See endnote 6 for relevant statutory language from 42 USC 13661(c); see also 24 CFR 5.855.
- <sup>33</sup> See endnote 7 for relevant statutory language from 42 USC 13661(c); see also 24 CFR 5.855.
- <sup>34</sup> “Borrowers may deny admission for criminal activity ... by household members in accordance with provisions 24 CFR 5.854, 5.855, 5.856, and 5.857.” CFR 3560.154(j).
- <sup>35</sup> See endnote 3 for relevant statutory language from 42 USC 13663(a); see also 42 USC 13664 (defining “federally assisted housing” to include Section 514 and Section 515 housing programs); but see 7 CFR 3560.154.
- <sup>36</sup> See endnote 4 for relevant statutory language from 42 USC 13661(a); but see 7 CFR 3560.154.
- <sup>37</sup> “Borrowers may deny admission for criminal activity ... by household members in accordance with provisions 24 CFR 5.854, 5.855, 5.856, and 5.857.” CFR 3560.154(j).
- <sup>38</sup> Id.
- <sup>39</sup> Id.
- <sup>40</sup> See 24 CFR 92.253(d).
- <sup>41</sup> For federal tax credits administered by the State of Illinois, see generally Illinois Housing Development Authority, 2018-2019 Low Income Housing Tax Credit Qualified Allocation Plan (2018).
- <sup>42</sup> See generally 24 CFR 582.235; 24 CFR 582.330.
- <sup>43</sup> See generally 24 CFR 583.235.
- <sup>44</sup> See generally 24 CFR 574.603.
- <sup>45</sup> See Illinois Rental Housing Support Program Act, 310 ILCS 105/1 et seq.
- <sup>46</sup> See generally Illinois Affordable Housing Tax Credit Program, Ill. Admin. Code, tit. 47, chap. II, pt. 355.

# Housing Provider Tool: How to Read a Criminal History Report

*Created by Cabrini Green Legal Aid*

Requesting a criminal history report is an easy process; understanding and verifying the accuracy is not. Information provided is not always straightforward and often includes unfamiliar terminology. This guide is designed to help demystify criminal history information on background check reports.

## Restrictions on Use of Background Checks/Criminal History Reports

The use of background checks is regulated by the Fair Credit Reporting Act. Housing providers and landlords must follow the two basic requirements (1) obtain permission to conduct a background check from the applicant; and (2) disclose to the applicant if the housing provider is taking an “adverse action,” based on the background check, such as refusing to rent, requiring a co-signer, etc.<sup>33</sup> Adverse actions must be communicated and information about the consumer reporting agency used must be provided to the applicant so they can request a copy of the criminal history report. Nothing prohibits a housing provider from providing a copy directly and providing a copy to the applicant makes it easier for the individual to address any errors immediately.

## How Criminal History Reports are Compiled

When requesting a criminal history report from a private company (known as a “consumer reporting agency”), information comes from publicly available sources. This is primarily through data maintained by circuit court clerk’s offices at the state level. While some states have a uniform court system where all state criminal history data are available in one repository (e.g., Iowa or Ohio), other state’s criminal history information, like Illinois, is maintained by each individual circuit clerk for the county. Background check companies search these available data sources to provide information in the criminal history report.

## Understanding Types of Offenses

Criminal history reports provide available court information for a wide variety of cases: traffic cases, ordinance violations, misdemeanor, and felony cases.

- **Traffic cases** are violation of local or state vehicle codes and range from running a red light to driving without a valid license.
- **Ordinance violations** are infractions of local or county ordinances that prohibit certain activity, like drinking on the public way or failing to vaccinate an animal.

<sup>33</sup>Federal Trade Commission (2016, October) Using Consumer Reports: What Landlords Need to Know. Ibid <https://www.ftc.gov/tips-advice/business-center/guidance/using-consumer-reports-what-landlords-need-know>

- **Misdemeanor** and **felony offenses** are violations of state law. Misdemeanors are less serious in nature and only punishable by up to one year in jail. Felonies vary in severity and can be punishable by a year or more in prison.
- **Felony Classes:** In Illinois, the class of felony offenses range from X (the most severe in terms of punishment), going down to 1, 2, 3 and 4 (the least severe in terms of punishment).
- **Case numbers** often reveal the type of case. Case numbers start with the year of the case, followed by a lettered code [TR (traffic), OV (ordinance), CM (misdemeanor) and CF (felony)], and another chain of numbers. A misdemeanor case from 2013 would have a format like this: 2013-CM-123456.

The name of the criminal charge itself can be deceiving, and cover a wide range of activity. For example, an “aggravated battery” could be merely touching a protected category of persons (e.g., shrugging off a police officer) or seriously injuring another person. “Aggravated unlawful use of weapon” is not actually firing or using a weapon, but merely possessing it without a license or keeping it somewhere unlawfully (e.g., in a car glove compartment).

### Outcomes of Criminal Cases

Each state has different terminology, and the information provided below is specific and unique to Illinois. The following lists of terms are referred to as “dispositions,” another word for the outcome of a criminal case.

When there has been “no finding of guilt” in a criminal case, charges are dismissed. When there is a “finding of guilt,” the individual will receive a sentence. Criminal background checks, however, do not always clearly indicate when someone has been found guilty or has been convicted. Instead, they sometimes just list the sentence.

There are two types of dispositions after a finding of guilt: 1) convictions; 2) sentences that are not considered convictions, or “non-convictions.” Non-conviction sentences are also referred to as deferred judgment or diversion sentences. If a person completes the terms of these sentences satisfactorily, it is not considered a conviction on their record under Illinois law, allowing the person to answer “no” to the question whether they have been convicted.

The following are names for dismissals, non-conviction sentences, or conviction sentences that you may see on a criminal history report:

Dismissals	Non-Conviction Sentences	Conviction Sentences
<ul style="list-style-type: none"> <li>• Dismissed</li> <li>• Nolle Prosequi</li> <li>• Stricken off with Leave to Reinstatement</li> <li>• Finding of Not Guilty</li> <li>• Non-Suit</li> </ul>	<ul style="list-style-type: none"> <li>• Supervision</li> <li>• 710-1410 Probation</li> <li>• TASC Probation</li> <li>• Second Chance Probation</li> <li>• Other “Special” Probations given at a local level</li> </ul>	<ul style="list-style-type: none"> <li>• Probation (without any qualifying terms)</li> <li>• Conditional Discharge</li> <li>• Jail or Prison Sentences</li> <li>• Time Considered Served</li> </ul>

### Pointers for Picking a Background Check Company

When looking to use a background check company, there are several factors to consider:

- Does the company employ researchers at the local level to obtain and verify information directly from data sources? These employees understand terminology and structures in the court system, providing the most reliable information in real time. Companies that perform up to date and thorough background checks are the least likely to report outdated, incomplete or missing information. The more a company relies on large, acquired databases of information, the more likely the company is to report an outdated record.
- Is the company legally compliant and following all state and federal laws?
- Does the company provide clear and concise records? It is important that the reader understand the report.
- Will the company tailor their reports to comply with your standards? If a user does not want to consider arrests, will the company not report arrests?

