



## UPDATED REPORT: HOUSING FOR ADULTS WITH CRIMINAL RECORDS

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### ISSUE

Update OLR Report [2006-R-0062](#) by (1) summarizing laws concerning ex-offenders' and supervised offenders' access to rental housing, (2) identifying current state initiatives to increase the availability of rental housing for ex-offenders, and (3) identifying legislative options for increasing such housing.

For purposes of this report, "ex-offenders" are adults with a criminal record who are not in custody or supervised by the correction or judicial system (e.g., individuals who are not on parole or probation). "Supervised offenders" are those who remain under correction or judicial supervision as part of their sentence. Ex-offenders and supervised offenders are "individuals with criminal records."

### SUMMARY

Generally, federal and state laws give public (i.e., housing authority) and private landlords discretion to reject applicants with a criminal record. In some cases, however, federal law requires federal housing authorities to reject individuals with certain criminal histories (e.g., methamphetamine production). Importantly, under federal and state statutes and case law, landlords cannot use applicants' criminal records as a pretext for rejecting them for an illegal reason, such as on the basis of their race or religion. Additionally, if an applicant's criminal record is directly related to a disability (e.g., former drug addiction), a landlord must consider providing a reasonable accommodation (e.g., ignoring the criminal record stemming from the disability).

Most of Connecticut's initiatives to increase housing options for individuals with criminal records focus on supervised offenders and individuals exiting the correction system without supervision. For example, the Department of Correction (DOC) (1) contracts for more than 1,000 halfway house beds for supervised offenders transitioning into the community after leaving prison and (2) operates work-release



programs to help individuals establish stable employment, housing, and finances before leaving the correction system.

We identified only one state initiative that addresses the housing needs of ex-offenders: the Connecticut Collaborative on Re-entry's (CCR) supportive housing program. CCR is a partnership between several state agencies and community providers that focuses on helping individuals who cycle between prison and homeless shelters by making supportive housing available to ex-offenders as well as supervised offenders. It receives support from the state's Second Chance Society Initiative, which seeks to help individuals avoid incarceration and if incarcerated, successfully re-enter society.

It is worth noting that individuals with criminal records, like other individuals, may qualify for other state housing programs, such as the Department of Housing's (DOH) security deposit guarantee [program](#) and the Connecticut Housing Finance Authority's homebuyer assistance [programs](#). They may also benefit from programs operated by community organizations and receiving state assistance like homeless shelters and re-entry programs. Many of these programs can be found on the state's [2-1-1 website](#), a resource that the DOC's re-entry counselors consult when helping offenders plan for re-entry.

We identified two options the legislature could consider to increase housing for ex-offenders. Specifically, it could pass legislation explicitly prohibiting housing discrimination on the basis of a criminal record. It could also expand the role of the state's [certificates of employability](#) by requiring landlords to use them in applicant screening. Currently, the Board of Pardons and Paroles and the judicial branch's Court Support Services Division issue the certificate to help eligible individuals with criminal records obtain jobs.

## **FEDERAL LAW**

Whether applying for project- or voucher-based federal public housing, the law treats individuals with criminal records similarly. It generally requires public housing authorities to screen applicants' behavior and suitability for (1) tenancy in federally-assisted public housing developments and (2) participation in the Section 8 housing choice voucher program. Among other permissible criteria, housing authorities may consider whether an applicant has a history of criminal activity (1) involving physical violence to people or property or (2) that would adversely affect the health, safety, or welfare of other tenants (24 C.F.R. § 982.553 and § 960.204). When screening for public housing developments, federal housing authorities must additionally consider the time, nature, and extent of an applicant's conduct (24 C.F.R. § 960.203). In addition to the screening conducted by housing

authorities, private landlords may conduct their own suitability screening of an applicant with a Section 8 voucher, as long as they comply with fair housing and anti-discrimination laws.

HUD recently released guidance for housing authorities on the use of criminal records in applicant screening. Among other things, the document (1) reiterates the department's policy that housing authorities are not required to adopt or enforce "one-strike" rules automatically denying admission to anyone with a criminal record and (2) specifies that housing authorities cannot refuse applicants based solely on arrest records (since these records do not necessarily indicate conviction). It also provides best practices for considering criminal records when screening applicants to "guard against unwarranted denial of assistance," (see Notice [PIH 2015-19](#), November 2, 2015). (Please note: there are many types of federally-assisted housing and some may use eligibility requirements other than those described in this report.)

While housing authorities have some discretion in determining whether a criminal record warrants denying admission, the law requires them to do so under certain circumstances. Specifically, they must deny admission to households with an individual who:

1. is subject to a lifetime sex offender registration requirement in any state;
2. has been convicted of producing methamphetamine in federally-assisted housing;
3. abuses alcohol in a manner that gives the housing authority reasonable cause to believe the behavior may threaten other tenants' health, safety, or right to peaceful enjoyment of their premises;
4. (a) currently engages in illegal drug use or (b) gives the housing authority reasonable cause to believe that his or her illegal drug use may threaten other tenants' health, safety, or right to peaceful enjoyment of their premises; or
5. within three years, has been evicted from federally-assisted housing for drug-related criminal activity, unless the housing authority determines that the (a) individual successfully completed rehabilitation or (b) circumstances leading to the eviction no longer exist (24 C.F.R. § 982.553 and § 960.204).

If a housing authority plans to deny admission on the basis of a criminal record, it must let the applicant know and provide him or her with a copy of the criminal record and an opportunity to dispute its accuracy and relevancy (24 C.F.R. § 982.553 and § 960.204).

## **STATE LAW**

Unlike the laws applicable to federal public housing, state law sets somewhat different screening procedures depending on whether individuals are applying for project-based housing or a housing voucher.

### ***Project Based Housing***

State law does not require housing authorities receiving state assistance to deny admission to individuals with specific types of criminal records. However, it authorizes them to do so if an applicant:

1. has a criminal record involving (a) physical violence to people or property; (b) the sale, distribution, use, or possession of illegal drugs; or (c) criminal acts that would adversely affect the health, safety, or welfare of other tenants;
2. abuses alcohol in a manner that gives the housing authority reasonable cause to believe the behavior may threaten other tenants' health, safety, or right to peaceful enjoyment of their premises; or
3. is subject to lifetime registration as a sex offender due to a sexually violent offense.

Similar to federal housing authorities, state housing authorities must consider the time, nature, and extent of the conduct and any factors indicating future improvement, such as evidence of rehabilitation or willingness to attend counseling ([CGS § 8-45a](#)).

### ***Rental Assistance Program (RAP)***

RAP is the state equivalent to the federal Section 8 housing choice voucher program. The state (or its agent) conducts eligibility screening for the program and may deny the application of an individual who (1) has an illegal drug or violent criminal activity conviction or (2) committed a corrupt criminal act in a public housing program (e.g., bribery or fraud) (*DOH's Administrative Plan for the Rental Assistance Program*, July 1, 2015). But because individuals with RAP vouchers rent units from private landlords, the state (or its agent) does not conduct comprehensive tenant suitability screening. Private landlords have the prerogative, as they do for all applicants, to accept only applicants that they deem suitable, as long as they comply with fair housing and anti-discrimination laws.

## **STATE INITIATIVES**

The state supports several initiatives that assist individuals in finding housing. Some target individuals with criminal records, while others are open to anyone who qualifies. For example, the state funds supportive housing, which is affordable housing that provides services such as counseling and healthcare to tenants with special needs or who are homeless or at risk for homelessness. Some of the state's supportive housing is reserved for ex-offenders and supervised offenders, while some is reserved for other populations, such as individuals with HIV/AIDS, a psychiatric disability, or recovering from addiction. Individuals with criminal records may be eligible for more than one type of supportive housing.

With regard to individuals with criminal records, the state provides financial, staff, and technical support for supportive housing units reserved for individuals who cycle in and out of the correction system and homeless shelters, including those (1) on probation or (2) unsupervised, but recently released from prison. According to the Office of Fiscal Analysis, these units are currently supported by funding allocated to the Second Chance Society Initiative for CCR. The funding (\$900,000 in FY 16 and \$1,800,000 in FY 17) will support an estimated 90 rental units in FY 16 and 180 units in FY 17.

Another example of a program that may help individuals with criminal records is DOH's Security Deposit Guarantee Program for low-income individuals who do not have sufficient savings for a security deposit. Under the program, DOH signs an agreement with a landlord stating that it will pay a tenant's security deposit, in part or in whole, if the tenant moves out of the apartment (1) leaving it damaged or (2) owing back rent. To participate, a tenant must meet one of several eligibility criteria, for example escaping domestic violence or moving from an emergency shelter into an apartment ([CGS § 8-339](#)).

## **LEGISLATIVE OPTIONS**

Based on information provided to us by the National Conference of State Legislatures and searches of other states' and advocacy organizations' websites, it appears that state-led efforts to increase the availability of housing for individuals with criminal records generally focus on supervised offenders. However, we identified two options the legislature could consider for increasing the supply of housing available to ex-offenders. Specifically, it could adopt a law explicitly prohibiting housing discrimination on the basis of a criminal record. Alternatively or in addition, the legislature could expand the role of the state's certificates of employability, which are issued by the Board of Pardons and Paroles and the judicial branch's Court Support Services Division.

## ***Pass Legislation Prohibiting Housing Discrimination Against Individuals With Criminal Records***

Federal and state law both prohibit discrimination in housing based on criteria such as age, race, sex, or national origin (see, e.g., 42 U.S.C. § 3604 and [CGS § 46a-64c](#)). However, neither explicitly prohibits discrimination against individuals with a criminal record. The [Legal Action Center](#) (LAC), a nonprofit law and policy organization that advocates for such individuals, among others, recommends that jurisdictions seeking to reduce the impact of criminal records on housing options adopt such a law. On its website, LAC provides a model law that could take the form of a state statute or local ordinance (see Attachment A). Based on an ordinance adopted in Madison, Wisconsin, the model law generally makes it an illegal discriminatory practice to refuse to rent or sell a dwelling to an individual because of his or her criminal record.

The model law authorizes landlords to consider whether the circumstances surrounding an offense bear a substantial relationship to tenancy, as may be the case if the individual has a criminal record related to the manufacture of illegal drugs or aggravated assault, for example. But it specifies that criminal records may not be considered if more than two years have passed since the applicant was placed on probation or parole, released from prison, or fined for the offense, unless the crime had to be reported to a sex offender registry.

The model law also includes provisions (1) requiring landlords to keep records concerning applicant screening procedures and (2) prohibiting (a) discrimination on the basis of a criminal record by mortgage lenders and (b) advertisements for housing that express limitations with respect to criminal backgrounds.

## ***Expand the Role of Certificates of Employability***

Several states, including California, Connecticut, New Jersey, and New York use “certificates of rehabilitation” (called “certificates of employability” in Connecticut ([CGS § 54-130e](#))) for individuals with criminal records. States issue these certificates to individuals with criminal records who prove that they are rehabilitated, based on evidence they submit, such as character reference letters or evidence of sobriety or community service. Generally, these certificates are targeted toward helping these individuals obtain employment. In Connecticut, for example, they remove some or all of the mandatory legal bars to employment or professional licenses that are imposed as a result of one or more criminal convictions. But they could also play a role in helping ex-offenders obtain housing.

LAC recommends that states expand or adopt certificate of rehabilitation laws to remove barriers to housing. Similarly, a [2010 article](#) in the *New England Journal on Criminal & Civil Confinement* recommends lawmakers require public housing authorities to review these certificates when making decisions about applicants with criminal records. In line with these recommendations, the legislature could adopt a law requiring landlords to assume, unless there is evidence to the contrary, that a person with a certificate of employability is not an unsuitable tenant because of his or her criminal record.

This idea is something Connecticut lawmakers have considered. In 2012, the Judiciary Committee reported out [sSB 453](#), which would have required public housing authorities, when considering an applicant's criminal record, to consider an applicant's "certificate of relief from barriers" (another name for a certificate of employability). The proposal originally came from the Connecticut Sentencing Commission, which noted that the two most significant barriers to reentry are employment and housing.

JSB:cmg

## **ATTACHMENT A**

### ***LAC's Model Legislation Prohibiting Housing Discrimination Against Individuals With Conviction Records***

1. It shall be considered an unfair discriminatory practice, unlawful, and hereby prohibited for any person having the right of ownership or possession of the right of transfer, sale, rental or lease of any housing, or the agent of such a person:
  - a. To refuse to transfer, sell, rent or lease, to refuse to negotiate for the sale, lease, or rental or otherwise to make unavailable, deny or withhold from any person any housing because of an arrest record or conviction record; or
  - b. To falsely represent that a dwelling is not available for inspection, sale, or rental because of discrimination related to an arrest or conviction record; or
  - c. To discriminate against any person because of an arrest or conviction record in the terms, conditions or privileges pertaining to the transfer, sale, rental or lease of any housing or in the furnishing of facilities or services in connection therewith, or in any manner. This ordinance does not apply, however, to any person's decision to share occupancy of a lodging room, apartment or dwelling unit with another person or persons.
    - i. Exclusions for certain convictions. This ordinance does not prohibit eviction or refusal to rent or lease residential property because of the conviction record of the tenant or applicant or member of the tenant or applicant's household, if the circumstances of the offense bear a "substantial relationship" to tenancy – i.e. if the offense is one that, given the nature of the housing, a reasonable person would have a justifiable fear for the safety of the landlord or tenant property or for the safety of other residents or employees. Provided that the circumstances of the offense bear a substantial relationship to tenancy, such offenses may include but are not limited to the following:
      1. at least two or more misdemeanor drug-related convictions related to the manufacture, delivery or sale of a controlled substance or any drug-related felonious criminal activity;
      2. criminal activity involving violence to persons such as murder, child abuse, sexual assault, battery, aggravated assault, assault with a deadly weapon;



3. criminal activity involving violence to or destruction of property, such as arson, vandalism, theft, burglary, criminal trespass to a dwelling;
- i. Time Limits on Exclusions. The exclusion for certain convictions shall not apply if more than two (2) years have elapsed since the applicant or member of the tenant's or applicant's household was placed on probation, paroled, released from incarceration or paid a fine for offenses set forth in paragraph (i) unless the offense is one which must be reported under the sex offender reporting requirement of [relevant state law.]
  - ii. Mandatory Recordkeeping Procedures. Notwithstanding the provisions contained in Paragraph (i), a person may not refuse to rent or lease residential property because of a conviction record of the applicant or a member of the applicant's household unless the person complies with all of the following:
    1. uses a written, uniform inquiry process, established for legitimate non-discriminatory business reasons;
    2. applies such process uniformly;
    3. advises applicants in writing at the time of denial, if refusal to rent is based in whole or in part on the conviction record of the applicant or a member of the applicant's household;
    4. keeps all applications, whether accepted or rejected, for at least two (2) years from the date of decision, along with a record of reasons for rejection, recorded in a uniform manner;
    5. in the event a formal complaint of discrimination is made to the [state Human Rights Commission], the landlord shall make available for inspection and permit the [state Human Rights Commission] or designee to inspect during normal business hours all documents identified in subparagraphs (1) through (4) above. The [state Human Rights Commission] Director or designee shall promptly conduct such inspection for the sole purpose of determining compliance with this subsection on conviction records. Any person who fails or refuses to allow such inspection(s) or who fails to maintain or retain required records shall be in violation of this ordinance.
    6. This paragraph is not intended to prohibit or restrict a current or new owner of property from instituting a conviction record screening policy at any time during his/her ownership of a property so long as it is applied uniformly to all similarly situated individuals and otherwise complies with this subsection.
    7. This paragraph is not intended to impose liability on a new owner of a property for actions or omissions of the former owner related to this paragraph, except to the extent the new owner continues the practice under his/her ownership.

- iii. Notwithstanding the provisions contained in paragraph (i), a person may not evict a tenant or refuse to lease residential property based on the fact that a tenant or member of the prospective tenant's household has been or may be the victim of domestic abuse, as defined in [state statute X], or has been a victim of a crime prohibited by [state statute Y.]
- d. For any bank, union, credit union, financial company, savings and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in lending or purchasing of loans, to discriminate against a person because of the arrest or conviction record of the person or any person associated with them, or the present or prospective owners, lessees, tenants or occupants of the housing for which the loan is made by doing any of the following:
  - i. denying a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining any housing, or denying a loan secured by the person's home,
  - ii. discriminating against such person in the fixing of the amount, interest rate, duration, or other terms or conditions of such loan or other financial assistance, or
  - iii. refusing to purchase or to discriminate in the purchase of such loan.
- 2. Nothing in this Ordinance shall prohibit a prospective creditor from obtaining a consumer report regarding an applicant if otherwise allowed by law and if the report is obtained and used as otherwise allowed by law:
  - a. For any person to post, print, broadcast or publish or cause to be posted, printed broadcast or published, any notice or advertisement relating to the transfer, sale, rental or lease of any housing which expresses preference, limitation, specifications or discrimination as to an arrest or conviction record.
  - b. For any person, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or perspective entry into the neighborhood of a person or persons with an arrest or conviction record. In establishing a discriminatory housing practice under this section, it is not necessary that there was in fact profit as long as profit was a factor for engaging in the blockbusting activity.
  - c. For any person to deny any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service organization or facility relating to the business of buying or renting dwellings, or to discriminate against any

person in the terms or conditions of such access, membership or participation on account of any arrest or conviction record.

- d. For any person or other entity whose business includes engaging in residential real estate related transactions to discriminate against any person in making available such a transaction, or in the terms or conditions of such a transaction because of an arrest or conviction record. As used in this subdivision, the term "residential real estate related transaction" means any of the following:
  - i. The making or purchasing of loans or providing other financial assistance:
    - 1. for purchasing, constructing, improving, repairing or maintaining a dwelling, or
    - 2. secured by residential real estate.
  - ii. The selling, brokering, or appraising of residential real property.
- e. In this subsection, prohibited discrimination includes discrimination because of an arrest or conviction record of:
  - i. The buyer, renter or applicant, or
  - ii. A person residing in or intending to reside in a dwelling after it is sold, rented and made available.
- f. It is the intention of the State that this subsection be interpreted consistently with Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 – 3619), as amended, and with regulations applicable thereto (24 C.F.R. Parts 100, 103, 109, 110, 115 and 121) except where the language of this subsection clearly requires a different interpretation, and consistently with applicable state laws.