

HUD-Subsidized Housing for Older Adults with Criminal Records

- Marie Claire Tran-Leung, Evictions Initiative Project Director & Senior Staff Attorney, National Housing Law Project
- Lisa Sitkin, Supervising Attorney, National Housing Law Project

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

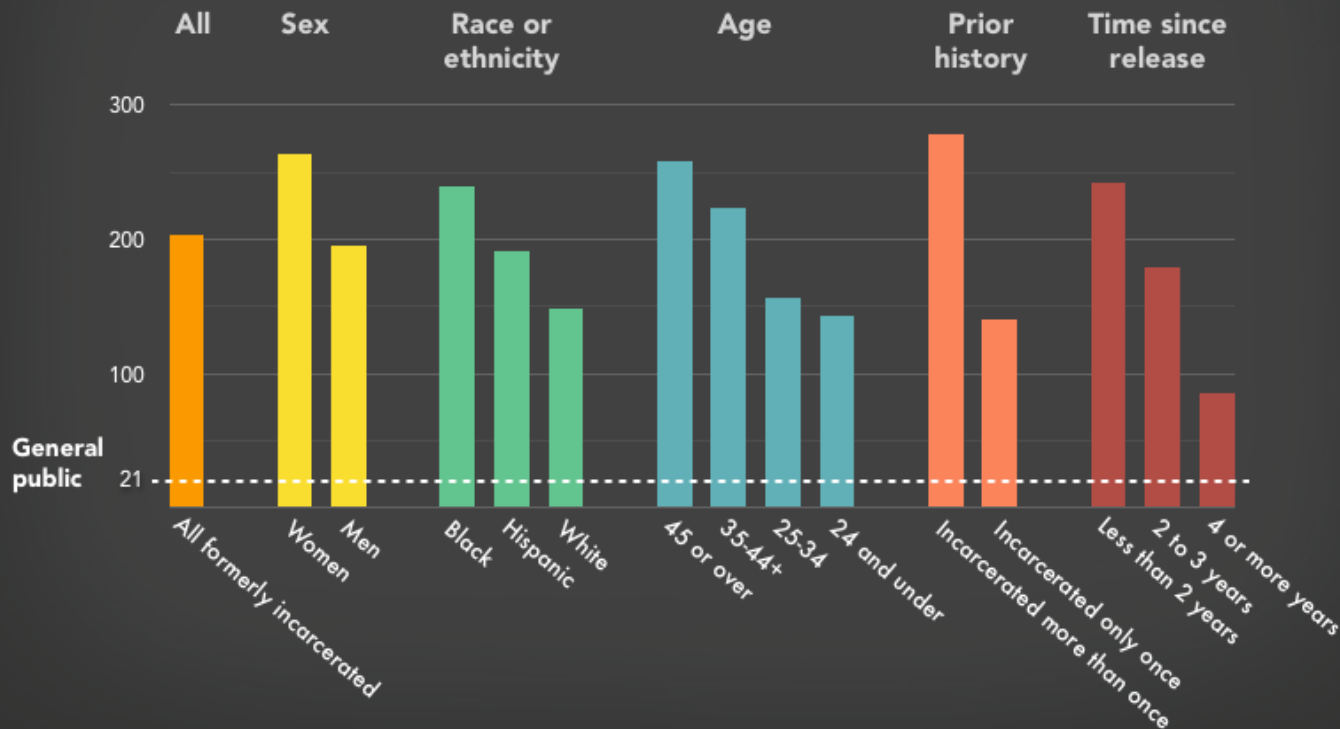
About NHLP

National Housing Law Project (NHLP) is a legal advocacy center focused on increasing, preserving, and improving affordable housing; expanding and enforcing rights of low-income residents and homeowners; and increasing housing opportunities for underserved communities. Our organization provides technical assistance and policy support on a range of housing issues to legal services and other advocates nationwide.

Homelessness Rates Among Formerly Incarcerated People

Homelessness rates among formerly incarcerated people

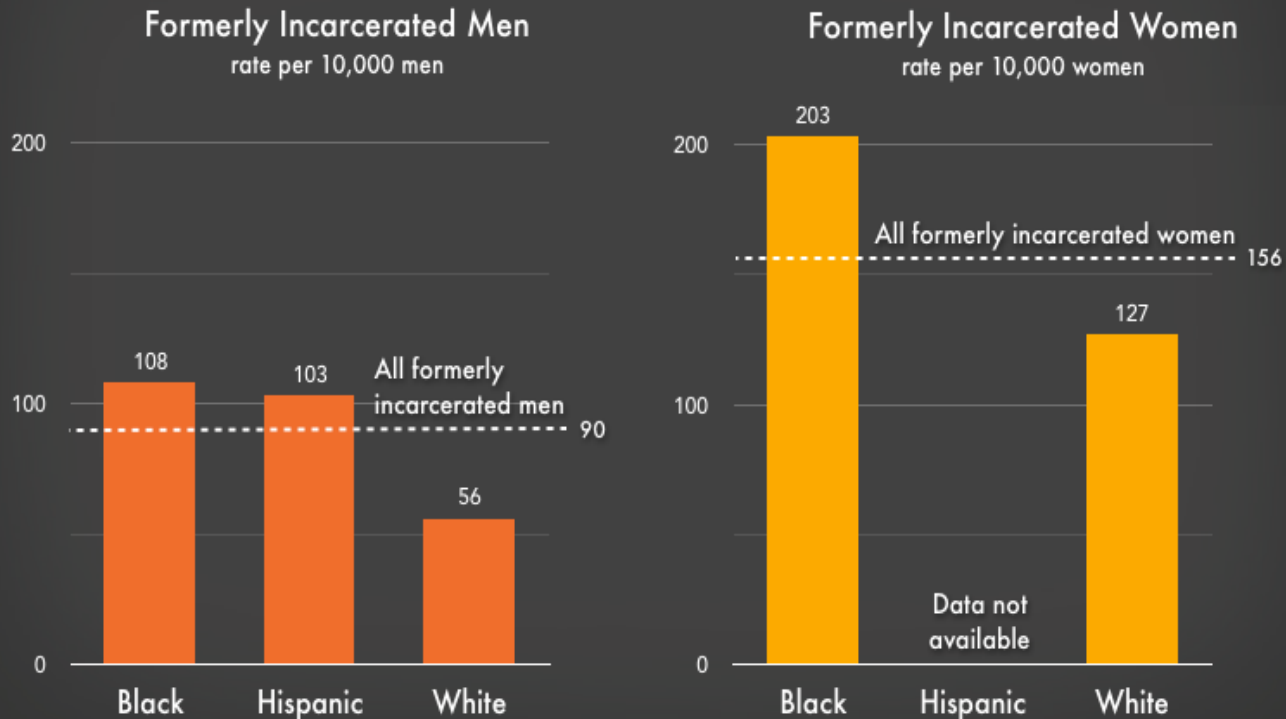
Number of homeless per 10,000 formerly incarcerated people in each category, compared to the general public in 2008 (the most recent year data for formerly incarcerated people are available)



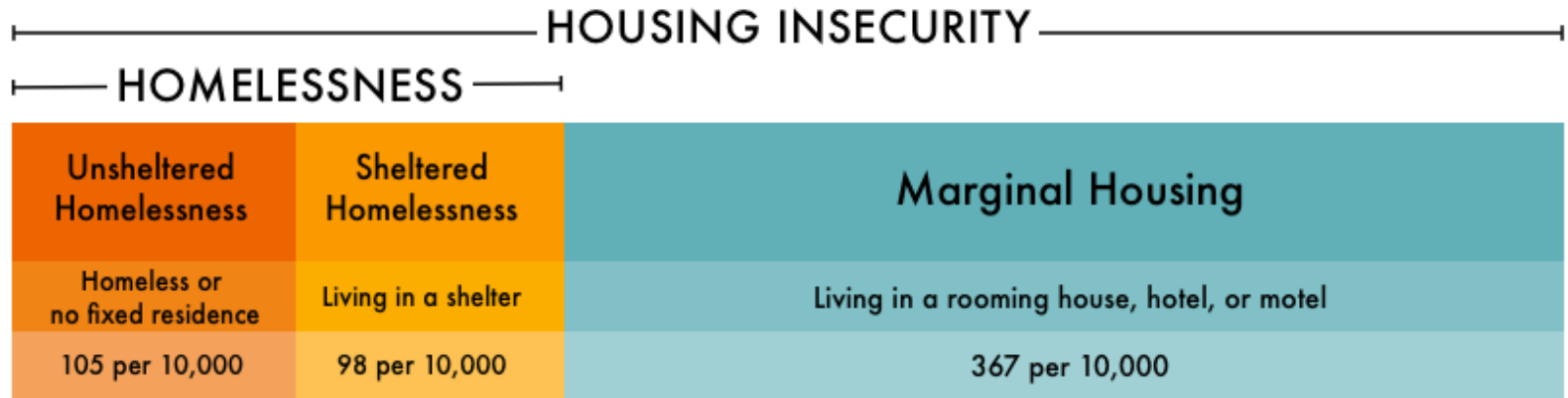
Gender, Race, and Ethnicity Combine to Put Women of Color at Greater Risk of Homelessness

Gender, race, and ethnicity combine to put women of color at greater risk of homelessness

Number of formerly incarcerated people per 10,000 experiencing sheltered homelessness when surveyed in 2008



Housing Insecurity



Type of Housing Covered (1 of 2)

- Public Housing Authority (PHA)-Administered Programs:
 - Public housing
 - Section 8 voucher program
 - Section 8 moderate rehab

Type of Housing Covered (2 of 2)

- HUD-Assisted Programs:
 - Project-based Section 8
 - Section 202 housing
 - Section 811 supportive housing
 - Section 811 supportive housing for people with disabilities
 - Section 221(d)(3) Below Market Interest Rate Program
 - Section 236 Rental Program

Common Issues in HUD-Assisted Housing

1. Use of **unreasonable lookback periods**
2. Use of **arrests** to prove criminal activity
3. Use of **overbroad categories** of criminal activity
4. Underuse of **mitigating circumstances**

Mandatory Bans

PHAs and project owners **MUST** deny admission to:

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

Discretionary Bans

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

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

Limits on Discretion

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

- **Time**—criminal activity must have occurred during a “*reasonable time*” before the screening takes place. 42 U.S.C. §13661(c)(2012).a
- **Violence Against Women Act (VAWA)**—requires consideration of “**adverse factors**” that may be a direct result of violence, including a criminal record
- **Civil Rights Laws**, including federal *Fair Housing Act*

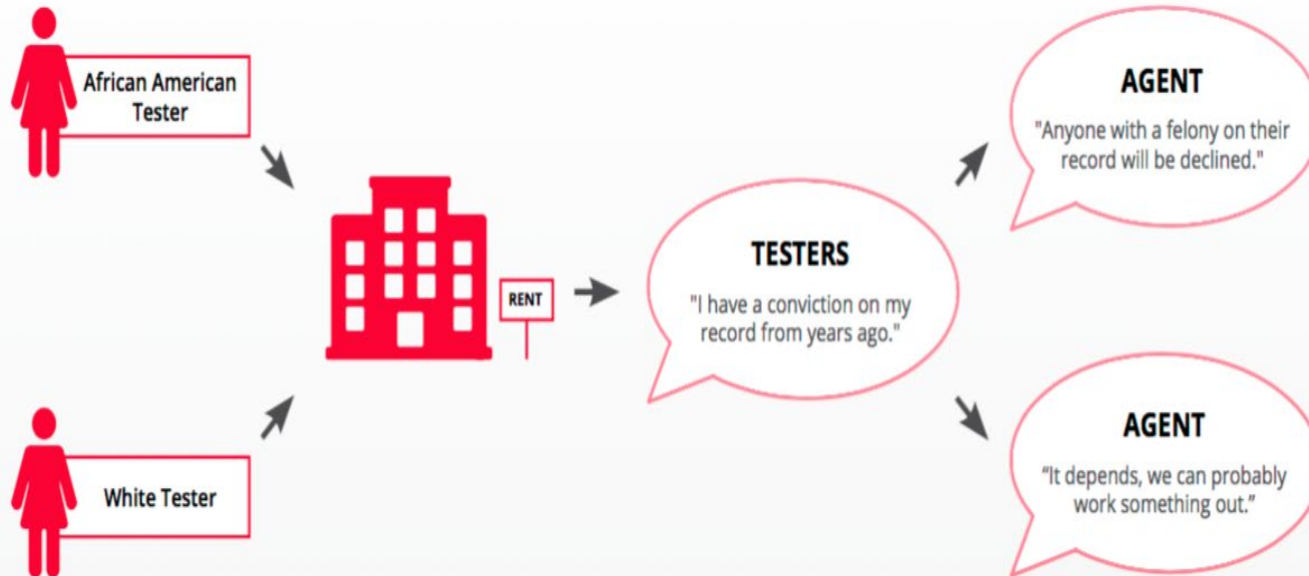
HUD Guidance on Criminal Records (2016)

- Criminal records status is *not* a protected class.
- But adverse housing decisions based on a person's criminal record screening may violate the Fair Housing Act, which prohibits discrimination on the basis of race, national origin, and other protected classes.
 1. ***Discriminatory treatment:*** criminal record as pretext for race
 2. ***Disparate impact:*** facially neutral policies that have an unjustified disparate impact on racial minorities

Discriminatory Treatment



UNLOCKING DISCRIMINATION
A DC Area Testing Investigation About Racial Discrimination
and Criminal Records Screening Policies in Housing



Disparate Impact: Step 1

Q1: Is there a disparate impact on race or other protected class?

- Plaintiff's burden
- Local and state statistics preferred, but HUD says that national statistics may work

Disparate Impact: Step 2

Q2: Is the disparate impact justified? In other words, is it necessary to achieve a substantial, legitimate, and necessary interest?

- Defendant's burden
- Proof required; speculation is not enough
- Defendant will have to show that the prohibited criminal activity “indicates a ***demonstrable risk to resident safety and/or property.***”

General Principles

- **No arrests without convictions** because no proof of criminal activity
- **No blanket bans on convictions** because not all indicate risk to resident safety and/or property
- Even if only some convictions, housing providers must show **demonstrable risk to resident safety and/or property**, usually by showing that it considers (1) nature, (2) severity, and (3) recency of criminal activity

Disparate Impact: Step 3

Q3: Is there a less discriminatory alternative?

- Burden back on plaintiff
- Individualized assessment of relevant mitigating factors will usually be a less discriminatory alternative to a blanket ban

Disparate Impact Claims

- No disparate impact claims for **convictions for manufacturing and distribution of drugs**. 42 U.S.C. 3607(b)(4).

Reasonable Accommodations

- Persons with disabilities may request a reasonable accommodation.
- Includes persons who are **recovering from addiction** and have successfully completed or are undergoing substance abuse treatment.
 - But not **current users** of illegal substances
 - But not persons who are a **direct threat to health and safety of others**
 - But not persons whose tenancy would **result in substantial physical damage to the property of others**

Fair Chance at the State and Local Level

States	Localities
New Jersey California – statewide fair housing regulations, eff. 1/1/2020 Oregon Texas	Seattle – no inquiry into a person’s criminal history Detroit, Michigan Cook County, Illinois Richmond, California Washington, DC Newark, NJ

[Fair Chance Ordinances](#)
[An Advocate’s Toolkit](#)

Case Example/Practical Tips

- Tenant wants to add 58-year-old parent to the household in a Low-Income Housing Tax Credit rental unit after parent was badly injured in a car accident. Landlord denies request based on an unspecified criminal record.
 - Request the tenant screening report/credit report
 - Investigate facts
 - Prepare “mitigating circumstances” letter
 - Possible legal challenge if LL has a blanket ban or otherwise unreasonable policy

Resources

- NCLER Training: Reentry: [Advocating for Formerly Incarcerated Older Adults](#)
- Justice in Aging Training Series: [Reentry & Older Adults](#)
- NHLP: [An Affordable Home on Reentry](#)

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Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.