



## Memorandum in Support of Legislation to Protect Individuals with Criminal Records From Discrimination in Applying for Housing

### **Need for Amendment**

Every year, tens of thousands of individuals are released from New York's state prisons and local jails into our community, and thousands more are under community supervision. People who have been involved with the criminal justice system face a number of significant obstacles. These obstacles prevent people from succeeding as full community members by limiting their access to essential needs and benefits, including family, shelter, work, education, civic participation, and financial stability. Finding and securing quality, stable housing can be among the most difficult of these challenges.

Because of the scarcity of safe, stable, affordable housing, people who have been involved in the criminal justice system are often among those least able to find a safe place to live. While New York State has had laws protecting people with criminal records from discrimination in employment and licensing for nearly forty years,<sup>1</sup> no such protections exist for housing. As a result, landlords regularly deny housing to applicants with criminal records irrespective of the severity of their crime, the time that has elapsed since committing the crime, or evidence of rehabilitation. In fact, landlords in New York can even deny an individual housing based solely on an arrest that did not result in a conviction.

As a result, people with criminal records often end up in unsafe housing conditions or in the shelter system. In fact, analyses of the NYC Department of Homeless Services shelter populations indicate that 20 to 23% of homeless adults have been incarcerated at some point in the two years prior to entering shelter and about 19% of persons released from NY State prisons listed shelters as their first known address.<sup>2,3</sup>

Yet, safe, stable housing is essential to the ability of people to participate in society and is a key component in avoiding recidivism. Housing enables people to achieve the stability needed to find and maintain employment. Housing also enables people to take care of their health, which in turn also contributes significantly to their ability to work. This impact is particularly significant for the large numbers of people who have been involved in the criminal justice system who suffer from chronic health conditions such as HIV/AIDS, substance use disorders and mental disorders. When people with chronic health issues cannot take care of their health, they are more likely to use expensive resources such as hospitals and detox facilities. They are also more likely to have further involvement with the criminal justice system.

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<sup>1</sup> Governor Hugh L. Carey's Memoranda Approving Article 23-A, McKinney's Session Laws 1976, p 2458, "The great expense and time involved in successfully prosecuting and incarcerating the criminal offender is largely wasted if upon the individual's return to society his willingness to assume a law-abiding and productive role is frustrated by senseless discrimination."

<sup>2</sup> Burt et al. 1999; Eberle et al. 2001; Kushel et al. 2005; Schlay & Rossi 1992

<sup>3</sup> Navarro, Mireya. November 14, 2013. Ban on Former Inmates in Public Housing Is Eased. The New York Times.

A number of jurisdictions have passed legislation in recent years to protect people with criminal records from discrimination in housing. In 2014, both San Francisco, California and Newark, New Jersey passed ordinances that bar housing providers from asking about certain types of criminal record information, delay the timing of legally permissible inquiries until later in the rental process. These laws also require that the provider perform an individualized determination in making a decision about whether to admit the individual into the housing.<sup>4,5</sup> Washington, D.C. enacted similar legislation in 2017.<sup>6</sup>

In 2017, Seattle enacted perhaps the most progressive housing protections for people with criminal records in the nation.<sup>7</sup> The legislation bars landlords from considering any criminal record information, except when individuals are required to register as a result of a conviction for a sexually related offense. When considering the application of such people, landlords must have a “legitimate business reason” necessary to achieve a substantial, legitimate, nondiscriminatory interest for denying the individual or family’s housing application. Applicants must also be notified of their rights and given a reason for a housing denial. The law also prohibits the use of advertising language that excludes people with criminal histories and allows the local Human Rights Commission to enforce the law, including permitting fines against landlords that violate the statute.

Meanwhile, Madison and Dane County, Wisconsin had similar policies from the 1970s until 2011 when the Wisconsin legislature passed legislation eliminating these protections in response to demands from the real estate industry, as part of a number of pieces of legislation enacted that year for the benefit of landlords. In fact, Madison’s ordinance made it illegal for landlords to consider most criminal record information if more than two years had passed since the tenant was placed on probation, paroled, released from incarceration, or paid a fine. The city also required that the landlord use a uniform written process for checking arrest and conviction records. Dane County, meanwhile, forbade housing discrimination based on conviction records unless they presented a justifiable fear for safety of residents or employees.<sup>8</sup>

Separately, in 2016, the Housing Authority of New Orleans reformed its admissions screening process so that only a specified list of convictions trigger review, and only convictions that occurred in the prior three years. If a person has a conviction that triggers further review, a panel conducts an individualized assessment and each person has an automatic right to appeal.

Additionally, in November 2015, the U.S. Department of Housing and Urban Development (HUD) issued guidance for public housing authorities and owners of federally-assisted housing to inform them that arrest records alone could not be the basis for denying admission, terminating assistance or evicting tenants. The guidance reminded these entities of their obligation to safeguard the due process rights of applicants and tenants and to comply with the civil rights requirements in the Fair Housing Act.<sup>9</sup> Then, in April 2016, HUD advised all housing providers and real estate entities that taking adverse housing actions – such as a refusal to rent or renew a lease – on the basis of an individual’s criminal history could constitute illegal race discrimination based on the fact that African Americans and Hispanics are

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<sup>4</sup> <http://www.jacksonlewis.com/sites/default/files/media/pnc/5/media.2595.pdf>

<sup>5</sup> <https://newark.legistar.com/LegislationDetail.aspx?ID=2246774&GUID=4520C077-5A1E-4EF8-BC34-2F01BA1A0C4B&FullText=1>

<sup>6</sup> <https://ohr.dc.gov/page/returningcitizens/housing>

<sup>7</sup> <https://www.seattle.gov/civilrights/civil-rights/fair-housing/fair-chance-housing>

<sup>8</sup> <http://www.tenantresourcecenter.org/discrimination>

<sup>9</sup> <http://portal.hud.gov/hudportal/documents/huddoc?id=PIH2015-19.pdf>

arrested, convicted, and incarcerated at rates disproportionate to their share of the general population.<sup>10</sup>

New York State has already begun to take steps to ease some of the barriers to housing listed above. In September 2015, Governor Cuomo announced that he was adopting 12 recommendations developed by the New York State Council on Community Re-Entry and Reintegration, which included new anti-discrimination guidance for New York State-financed housing.

These steps are crucial, but barriers to safe, affordable, stable housing are still insurmountable for many people with criminal conviction histories. We therefore urge New York to enact legislation to prevent landlords and real estate brokers from discriminating against individuals with criminal records. Such legislation should, at a minimum, limit what information landlords and real estate brokers may request, delay the timing of any legally permissible inquiries, and establish standards for how any criminal record information may be considered when making decisions regarding whether to approve an application for a rental, lease, or sublease.

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<sup>10</sup> [http://portal.hud.gov/hudportal/documents/huddoc?id=HUD\\_OGCGuidAppFHAStandCR.pdf](http://portal.hud.gov/hudportal/documents/huddoc?id=HUD_OGCGuidAppFHAStandCR.pdf)