

# **NO SECOND CHANCE: PEOPLE WITH CRIMINAL RECORDS DENIED ACCESS TO PUBLIC HOUSING**

## **AN EXCERPT OF A REPORT PREPARED BY THE HUMAN RIGHTS WATCH - DISTRIBUTED BY THE NEW MEXICO WOMEN'S JUSTICE PROJECT**

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Decent and stable housing is essential for human survival and dignity, a principle affirmed both in U.S. policy and international human rights law. The United States provides federally subsidized housing to millions of low-income people who could not otherwise afford homes on their own. U.S. policies, however, exclude countless needy people with criminal records, condemning them to homelessness or transient living.

Exclusions based on criminal records ostensibly protect existing tenants. There is no doubt that some prior offenders still pose a risk and may be unsuitable neighbors in many of the presently-available public housing facilities. But U.S. housing policies are so arbitrary, overbroad, and unnecessarily harsh that they exclude even people who have turned their lives around and remain law-abiding, as well as others who may never have presented any risk in the first place.

There is no national data on the number of people excluded from public housing because of criminal records, or even the number of people with criminal records who would be ineligible if they applied. But we know that there are several million ex-felons in the United States; under current housing policies, everyone convicted of a felony is automatically ineligible for a minimum of five years. We also know that there are tens of millions of Americans who have been convicted of misdemeanors, or merely arrested but never convicted of any offense, and they too can be and often are excluded from public housing on the basis of their criminal records.

Under existing policies, criminal records will shadow people for the rest of their lives. Even an arrest that is not followed by conviction can have a lifelong impact. Whether the offense is a violent crime or a low-level drug or property offense-and even most felonies do not involve violence against persons-a criminal record can be a barrier to employment, education, the right to vote, and certain public benefits, including public housing.

The tenuous relationship between public housing restrictions and legitimate safety goals is exemplified by policies that, for example, automatically deny housing to a person convicted of a single shoplifting offense four years earlier, or to someone convicted of simple possession of marijuana ten years earlier. Denying these people a home does little to promote the welfare of existing tenants. But it can cause homelessness or transient living for those excluded-and it can be counterproductive for community safety, as it is difficult to be law-abiding while living on the streets.

In addition to the explicit goal of protecting tenant safety, there seem to be at least two other reasons for criminal record exclusions in public housing. The first is a widespread belief in the United States that people who have broken the law do not deserve a second chance and are the legitimate target of policies that are little more than expressions of disdain and hostility. Such a punitive view ignores the right of all people to a life with dignity and should have no place in housing policy.

The second reason is that the demand for public housing far exceeds the supply. Neither the federal nor state governments have taken upon themselves the goal of dramatically increasing the availability of affordable housing. Instead, by requiring strict admissions policies, the federal government has tacitly adopted a method of "triage" to whittle down the numbers of qualified applicants. Excluding those with criminal records has proven to be a politically cost-free way to entirely cut out a large group of people from the pool of those seeking housing assistance.

Exclusions from public housing are among the harshest of a range of punitive laws that burden people with criminal records. Nevertheless, to date they have received scant attention from policymakers, elected officials, advocates for the poor, and the public at large.

There is, however, growing recognition nationwide of the wisdom of providing transitional services and assistance to help over half a million men and women who leave prison each year. Indeed, as President Bush pointed out in his 2004 State of the Union address, such services are crucial if these former prisoners are to successfully navigate their reentry to life outside prison walls. An overwhelming majority of those who are incarcerated were poor when they were arrested, and they will return to their communities with fewer resources and more needs than when they left.

The Bush administration and Congress have endorsed the concept of providing transitional housing to at least some former prisoners, but transitional housing is, by definition, temporary. Policymakers to date have failed to recognize the devastating impact of public housing exclusionary policies that outlast the transition period.

As long as those policies remain unchanged, former prisoners, as well as people with criminal records who were never sent to prison, will find themselves condemned to living on the streets, in overcrowded shelters, in squalid transient motels, or crowded into in the homes of friends and relatives.

The exclusion of people with criminal records from public housing is often referred to as the "one strike" policy. This policy developed in the 1990s as an attempt to address drug trafficking, violent crime, and disorder in public housing, especially urban high-rise developments. In 1996, President Bill Clinton declared: "The rule in public housing should be one strike and you're out." That is, commission of one offense suffices to render a person ineligible to be admitted to or remain in public housing. Congress subsequently incorporated the "one strike" policy into federal housing law. Today, federal law requires public housing authorities (PHAs), the agencies that administer housing assistance and manage public housing property, to exclude people with certain types of criminal records and gives them broad discretion to deny admission to others.

Federal law bans outright three categories of people from admission to public housing: those who have been convicted of methamphetamine production on the premises of federally funded housing, who are banned for life; those subject to lifetime registration requirements under state sex offender registration programs; and people who are currently using illegal drugs, regardless of whether they have been convicted of any drug-related offense.

PHAs have the discretion to deny admission to three additional categories of applicants: (1) those who have been evicted from public housing because of drug-related criminal activity for a period of three years following eviction; (2) those who have in the past engaged in a pattern of disruptive alcohol consumption or illegal drug use, regardless of how long ago such conduct occurred; and, (3) the catch-all category of those who have engaged in any drug-related criminal activity, any violent criminal activity, or any other criminal activity, if the PHA deems them a safety risk. Our research indicates that, in practice, these discretionary categories are used to exclude a wide swath of people with criminal records without any reasonable basis to believe they may actually pose a risk.

Federal regulations advise PHAs to take into consideration in their admissions decisions the nature and remoteness of applicants' offenses, as well as mitigating factors and evidence of rehabilitation. But they do not require PHAs to do any individualized evaluations of whether or not a specific applicant is likely to pose a risk to the safety of existing public housing residents-and few of them provide a meaningful evaluation before issuing a rejection. Nor does the Department of Housing and Urban Development (HUD)-the federal agency that administers housing programs-review admissions criteria established by the PHAs to determine if, on their face, they are consistent with federal housing policy and goals.

Most PHAs automatically deny eligibility to an applicant with a criminal record without considering rehabilitation or mitigation. Consideration of those factors typically occurs only if and when an applicant for housing seeks administrative review of a denial of eligibility. Those who have lawyers often win such appeals. But many applicants for public housing are unable to secure representation, and are therefore unable to successfully challenge denials.

In a country with the wealth of the United States, the fundamental human right to housing is surely not satisfied when an estimated 3 million people are homeless in any given year, including many who have been excluded from federally subsidized housing.

This report, however, does not address the broader problem of homelessness in the United States, but assesses public housing exclusionary policies against human rights standards. Our research demonstrates that these policies are arbitrary and unreasonably overbroad. By singling out whole classes of people for exclusion-in some cases by law; in others, by overly rigid application of screening criteria-these policies violate the rights of individuals who do not actually pose a risk but who are nonetheless denied access to public housing facilities. Such exclusionary policies are also discriminatory. Racial and ethnic minorities suffer disproportionately from exclusionary housing policies because of their overrepresentation among those who experience arrest and prosecution, those who currently live in poverty, and those who seek public housing. Human Rights Watch is not aware of any other country that deprives people of the right to housing because of their criminal histories.

The United States should abandon "one strike" policies, reject all automatic federal exclusions, and prohibit local housing authorities from establishing their own. PHAs should be required to undertake individualized and meaningful assessments of each applicant to ascertain whether they pose a risk to the safety, health, and welfare of existing tenants. The United States must recognize that all its residents-even those who may not be appropriate for traditional public housing because of the risks they pose-have a right to decent and affordable housing.