

Strategies for Addressing Discrimination: Housing Providers' Use of Criminal Records

Thank you for participating. The event will begin shortly...



Technical Tips

- ❑ To access Closed Captioning, click the Live Transcript button, and then click "Show Subtitles" to view closed captioning.
- ❑ You can choose for your audio to come through your computer speakers or your phone.
- ❑ This event is being recorded. Materials will be posted on www.HUDEXchange.info/NFHTA
- ❑ For technical difficulties:
 - Sign out, then sign back in
 - Request help in the Q&A box
 - Email NFHTA@cloudburstgroup.com for further assistance

Learning Objectives

- ❑ Recognize how the use of criminal records may violate the Fair Housing Act and other civil rights laws.
- ❑ Identify the applicable theories of proof and what evidence is important in conducting investigations related to the use of criminal records.
- ❑ Appreciate the importance of statistical evidence in discriminatory effects investigations involving the use of criminal records.
- ❑ Understand the requirement for reasonable accommodations to criminal records policies.
- ❑ Learn best practices for housing providers in their use of criminal records to screen tenants.

Reminders

- ❑ This event is being recorded.
- ❑ Materials, including the slide deck and resources, are posted on www.HUDExchange.info/NFHTA.
- ❑ Event recording will be available about two weeks after the event.
- ❑ Submit questions in the Q&A box at any time during today's event.



Strategies for Addressing Discrimination: Housing Providers' Use of Criminal Records

Presenters:

Stephon Woods, Trial Attorney, HUD OGC

Anna Bruton, Disability and Fair Housing Attorney, HUD OGC

Maggie Donahue, Trial Attorney, HUD OGC



Disparities in the Criminal Justice System

- Blacks represent 13% of U.S. population; account for 27% of all arrests.
- In 2019, incarceration rate of Black males was 5.7 times that of White non-Hispanic males.
 - Similarly, incarceration rate of Black females was 1.7 times the rate of White non-Hispanic females.
- 2021 study: Hispanics incarcerated in state prisons 1.3 times the rate of White non-Hispanics.
- Data from 2016: 38% of state and federal prisoners reported having a disability (cognitive, ambulatory, and vision); persons with disabilities account for 15% of general population.



Fair Housing Act

42 U.S.C. § 3601 *et seq.*

The Fair Housing Act (or Act) prohibits discrimination in the sale, rental, or financing of dwellings and in other housing-related activities on the basis of:

- race
- color
- religion
- Sex (including sexual orientation and gender identity)
- disability
- familial status or
- national origin

Criminal Records and the Fair Housing Act

- Does not protect a person with a criminal record from discrimination.
- Housing provider may violate the Act by using criminal records to deny housing to persons with protected characteristics.
- Who can be held liable for violations of the Act?
 - Private landlords
 - Management companies
 - Condominium associations or cooperatives
 - Third-party screening companies
 - HUD-subsidized housing providers
 - Public entities that operate, administer or fund housing or that enact ordinances that restrict access to housing based on criminal involvement.



Three Theories of Liability under the Fair Housing Act

1. Discriminatory intent (aka disparate treatment)
2. Discriminatory effects (aka disparate impact)
3. Refusal to make reasonable accommodations



Discriminatory Intent

- Housing provider may violate the Act if they intentionally discriminates in using criminal history information, i.e., treats an applicant or renter differently because of a protected characteristic.
- Housing provider's use of criminal records or other criminal history information as a pretext for unequal treatment because of a protected characteristic is no different from discriminatory application of any other rental or purchase criteria.



Discriminatory Intent

Examples:

- Housing provider rejects a Hispanic applicant based on his criminal record, but admits a non-Hispanic White applicant with a comparable criminal record.
- Property manager discourages a Black applicant with a criminal record from applying, but encourages a White individual with a comparable criminal record.
- After learning that an applicant was previously homeless and hospitalized for treatment of a mental health condition, a management company departs from its standard procedures and conducts a criminal background screening of the applicant.



Discriminatory Intent

Examples:

- Housing provider evicts a Black tenant who was convicted of a crime but does not evict a White tenant who was convicted of a similar crime.
- Locality applies a crime-free ordinance requiring the eviction of criminally involved residents in a neighborhood with a significant Black or Hispanic population but does not apply the ordinance in neighborhoods that are predominantly populated by White households.



Discriminatory Intent

- Claims that a housing provider used criminal records or other criminal history information to discriminate intentionally should be investigated in a manner similar to other allegations of intentional discrimination.
- [2018 OGC Elements of Proof Memo](#)
- Evidence may be direct or circumstantial



Discriminatory Intent: Direct Evidence

- Direct evidence most typically takes the form of a facially discriminatory statement or policy.
- Housing provider's oral or written statements indicating a preference for an applicant or tenant not of complainant's protected class are direct evidence of discrimination.
- A policy is facially discriminatory if it explicitly treats members of a protected class less favorably than those who do not belong to the protected class.



Discriminatory Intent: Circumstantial Evidence

Unless there is direct evidence of discriminatory intent such as written or oral statements, evidence is usually gathered and analyzed using the *McDonnell Douglas* shifting burdens framework.

- First, evidence must establish a prima facie case for disparate treatment. Elements adjust to fit the particular circumstance at issue.
- The burden then shifts to housing provider to offer evidence of a legitimate, nondiscriminatory reason, which must be clear, reasonably specific, and supported by admissible evidence.
- Plaintiff/Complainant may still prevail if the criminal record was not the true reason for the adverse housing decision, and was instead mere pretext for unlawful discrimination



Discriminatory Effects

- Housing provider violates the Act when their policy or practice has an unjustified discriminatory effect, even when the provider had no intent to discriminate.
- A facially-neutral policy or practice that has a discriminatory effect violates the Act if it is not supported by a legally sufficient justification.
- Thus, where a policy or practice that restricts access to housing on the basis of criminal history has a disparate impact on members of a protected class, such policy or practice is unlawful if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest, or if it could be served by another practice that has a less discriminatory effect.

Discriminatory Effects: Three Steps



Discriminatory effects liability is assessed under a three-step burden-shifting standard:

First, Plaintiff or HUD must prove that the criminal history policy has a discriminatory effect.

Second, the housing provider must prove that the challenged policy is justified - that is, that it is necessary to achieve a substantial, legitimate, nondiscriminatory interest.

Third, if the housing provider successfully proves that its criminal history policy is justified, the plaintiff or HUD must prove that such interest could be served by another practice that has a less discriminatory effect.



Step One: Does the policy have a discriminatory effect?

- This is highly fact-specific and case-specific inquiry.
- Where available, local statistical evidence should be used to evaluate whether a challenged policy has a disparate impact on a protected class. If local statistics are not available and there is no reason to believe they would differ from national statistics, national statistics may be used.
- Additional evidence, such as applicant data, tenant files, census demographic data, and localized criminal justice data may be relevant.
- Housing provider may offer evidence to refute the claim that its policy or practice causes a disparate impact on one or more protected classes.



Step Two: Is the Policy Justified?

- Housing provider must prove the challenged policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest of the provider.
- Some landlords and property managers assert that protecting other residents and their property is the reason; however, housing provider must show the challenged policy actually achieves safety amongst residents.



Step Two: Is the Policy Justified? (cont'd)

- Exclusions because of prior arrest cannot satisfy the housing provider's burden of showing that a policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest because arrest records do not constitute proof of past unlawful conduct and are often incomplete (e.g., they fail to indicate prosecution, conviction, or acquittal).
- Exclusions because of prior conviction will serve as sufficient evidence to prove that someone engaged in certain criminal conduct, but housing providers must still prove that a policy to exclude based on such convictions is necessary to achieve a substantial, legitimate, nondiscriminatory interest.
 - Blanket prohibitions will not suffice.
 - Even more tailored policies excluding certain types of convictions must still be justified.



Step Three: Is There a Less Discriminatory Alternative?

- Only applicable if the housing provider successfully proves that its policy is justified.
- Plaintiff or HUD has the burden to prove that such interest could be served by another practice that has a less discriminatory effect.
- Less discriminatory alternatives will depend on the case, but an individualized assessment of relevant mitigating information is likely to have a less discriminatory effect.
- Relevant individualized evidence might include:
 - Facts or circumstances surrounding criminal conduct
 - Age of the individual at the time of the conduct
 - Evidence that the individual has maintained a good tenant history before and/or after the conviction or conduct
 - Evidence of rehabilitation efforts.



Statutory Exemption

- Statutory Exemption for exclusion because of illegal manufacture or distribution of a controlled substance
- Section 807(b)(4)- Act does not prohibit “conduct against a person because such person has been convicted . . . of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)”
- *Limitation:* Section 807(b)(4) only applies to disparate impact claims based on the denial of housing due to the person’s *conviction* for drug manufacturing or distribution; it does not provide a defense to disparate impact claims for policies that deny/exclude based on arrests.



Reasonable Accommodations and Criminal Records

Ensuring Equal Opportunity for Individuals with Disabilities in Housing

Poll Question



A property management company implements a policy requiring the denial of admission for any individual with two or more convictions. The management company states that such a policy is needed to protect the health, safety, and welfare of other residents.

An individual with two recent public intoxication convictions applies for housing and requests a reasonable accommodation to the housing provider's policy. The individual tells the management company that they are addicted to alcohol. Can the housing provider permissibly deny the applicant based on its policy?

- A. Yes
- B. No

Reasonable Accommodation Obligation



- Fair Housing Act – 24 CFR 100.204
 - Applies to private and federally funded housing
 - Example: Privately owned apartment complex
 - Section 504 of the Rehabilitation Act – 24 CFR 8.33
 - Applies to recipients of federal financial assistance
 - Example: HUD public and assisted housing

Reasonable Accommodation Obligation




- Americans with Disabilities Act – 28 CFR 35.130(b)(7) and 28 CFR 36.302(a) (regulation refers to “reasonable modifications”)
 - Title II of the ADA applies to housing built, operated, or sponsored by state or local governments
 - Title III of the ADA applies to public accommodations associated with housing that are open to the general public and commercial facilities
 - Example: Title II - public housing authorities; Title III - homeless shelters



Reasonable Accommodation

- “Reasonable accommodation” - change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with a disability to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces.
- Unlawful for a housing provider to refuse to make reasonable accommodations to rules, policies, practices, or services when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use and enjoy a dwelling.
- Joint Statement on Reasonable Accommodations under the Fair Housing Act, <https://www.hud.gov/offices/fheo/library/huddojstatement.pdf>




Reasonable Accommodations and Criminal Records Screening

- Requirement to provide a reasonable accommodation is present at all times, including during the criminal records screening process.
- Housing provider's screening process must be accessible to all individuals.
- Documents used during the screening process must be provided in accessible formats.
- Housing provider should make known the screening criteria being used.
- Housing provider may need to provide more than one reasonable accommodation to ensure that an individual with a disability can participate in the criminal records screening process.


Reasonable Accommodation Analysis

- Does the individual have a “Disability”?
 - Defined by statute and regulations
- Is there a “disability related need” for the accommodation?
 - Link or nexus between the disability and the requested accommodation
- Is the accommodation “reasonable”?
 - Absent a statutory exception (undue financial and administrative burden or fundamental alteration to essential nature of housing providers’ operations), the accommodation is generally deemed reasonable

Reasonable Accommodation Analysis

- 
- Individual is not required to use a formal process to request a reasonable accommodation
 - Reasonable accommodation request can be made verbally or in any other format
 - No “special or magic words” are required
 - Housing providers must grant a reasonable accommodation request made by or on behalf of a person with a disability
 - Housing providers cannot ignore “known” or “obvious” disabilities and may be required to evaluate if a reasonable accommodation may be appropriate absent a specific request
 - There may be circumstances where a provider may be required to provide an accommodation when the provider has knowledge of the individual’s disability and the need for a particular accommodation

Making Reasonable Accommodations for Criminal Records

- 
- Under federal fair housing and disability laws, an individual with a disability has the right to request a reasonable accommodation to a housing provider's criminal records screening policy.
 - Commonly, an individual with a disability might request a reasonable accommodation to a criminal records screening policy when:
 - Applying for housing
 - Participating in a supportive service or other activity offered by a housing provider

Making Reasonable Accommodations for Criminal Records

- Individual with a disability can request a reasonable accommodation to a housing provider's criminal screening policy prior to screening taking place, during the screening process, or after the screening has been completed.
- Housing provider must consider and respond to an individual's reasonable accommodation request prior to making a final housing determination.
- If an individual requests a reasonable accommodation after a determination has been made by the housing provider, the housing provider must reevaluate the individual's application in light of the accommodation request.
- Failure to grant a reasonable accommodation constitutes disability discrimination under federal fair housing and nondiscrimination laws.



Providing a Reasonable Accommodation Based on Criminal History

- If an individual's criminal history is directly related to their disability, it may be necessary for a housing provider to provide the individual with a reasonable accommodation in form of:
 - Waiving or altering a criminal records screening policy
 - Disregarding aspects of the individual's criminal history when making a housing determination
 - Changing how much weight or consideration is given to an individual's criminal history
 - Considering mitigating circumstances

Criminal History and Substance Abuse



An applicant applies for a one-bedroom apartment in May 2022. The results of her criminal background screening reflect two misdemeanor drug possession convictions in January 2021. When questioned about her background, the applicant explains that she started using illegal drugs to manage her hallucinations after she lost her medical insurance and could no longer obtain her prescribed psychiatric medication. The applicant further explains that she is participating in a supervised rehabilitation program and is not currently using illegal drugs.

The applicant requests a reasonable accommodation to the housing provider's criminal records screening policy. Based on the facts above, can the housing provider outright deny this request?



Discussion – Substance Abuse

- Individuals who currently engage in the illegal use of drugs are specifically excluded from the definition of disability and are not entitled to protections under the Fair Housing Act, Section 504, or the ADA (See, e.g., *United States v. Southern Management Corp.*, 955 F.2d 914, 919 (4th Cir. 1992) (discussing exclusion in 42 U.S.C. § 3602(h) for "current, illegal use of or addiction to a controlled substance"))
- Drug addiction is a disability and federal disability laws provide protections for an individual who is –
 - participating in a supervised drug rehabilitation program and is no longer engaging in the use of illegal drugs;
 - has successfully completed a supervised drug rehabilitation program, or has otherwise been successfully rehabilitated and is not currently engaged in the illegal use of drugs; or
 - erroneously regarded as engaging in illegal drug use but is not engaged in such use.



Criminal History and Direct Threat

A tenant has resided in his apartment building for eight years without incident. A new management company recently took over and required that all tenants reapply. The results of the tenant's criminal background screening showed a 15-year-old felony assault conviction. When asked about his background, the tenant explained that he got into an altercation with another individual during a mental health exacerbation caused by a lapse in treatment. The tenant produced records showing a history of compliance with his medication treatment regimen and accolades for community service. However, the management company relies on this conviction to determine that the tenant presents a "direct threat" and issues the tenant an eviction notice. The management company denies the tenant's reasonable accommodation request to their criminal records policy.

Is the housing provider likely to succeed using a "direct threat" argument?



Discussion – Direct Threat

- The Fair Housing Act does not require that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. 42 U.S.C. 3604(f)(9).
- Housing provider must have reliable, objective evidence that an individual with a disability poses a direct threat before excluding them from housing on that basis.
- Provider cannot base this determination on fear, speculation, or stereotype about a particular disability or persons with disabilities in general.



Discussion – Direct Threat

- A determination that an individual poses a direct threat must rely on an individualized assessment that is based on reliable, objective evidence. The assessment must consider:
 - (1) the nature, duration, and severity of the risk of injury;
 - (2) the probability that injury will actually occur; and
 - (3) whether there are any reasonable accommodations that will eliminate the direct threat.
- As part of this individualized assessment, a housing provider must also take into account whether the individual has received intervening treatment or medication that has eliminated the direct threat.

Reasonable Accommodations and Best Practices for Housing Providers



- Have fair written reasonable accommodation procedures that are available in accessible formats (eg., Braille, audio, large type)
- Document reasonable accommodation requests, interactions with applicants and residents, and actions taken to resolve the request
- Engage in the interactive process with applicants and residents
- Make “individualized” determinations on a case-by-case basis
- Be reasonable
- Recipients of federal financial assistance have an obligation to monitor the compliance of its subrecipients.



Best Practices

- for using statistics when investigating criminal records cases to determine if there is a disparate impact
- for housing providers to avoid fair housing liability based on criminal records practices

[June 10 Memo for FHEO, FHAPs and FHIPs on Implementation of 2016 Criminal Records OGC Guidance](#)

Statistics



Connect with your inner nerd and do some digging, but make sure to also get in touch with an economist or statistician early on.



Tip 1: Identify the policies or practice(s) at issue.



<https://commons.wikimedia.org/wiki/User:Stephendickson>

There are often discrepancies between what a policy is in practice, what the written policy is, and what applicants and/or tenants are told the policy is --- *all* should be identified and analyzed.



Conduct interviews and request information from the third-party screening company to determine what the screening criteria is

THIRD PARTY SCREENING COMPANIES





“A disparate-impact claim relying on a statistical disparity must fail if the plaintiff cannot point to a defendant's policy or policies causing that disparity”

Tip 2: Identify statistics that are specifically tailored to the policy or practice.



**What is the relevant
population?**

**TIP 3: FIRST SEEK ACTUAL DATA: WHO
APPLIES TO THE PROPERTY AND WHO IS
EXCLUDED BY THE POLICY AT ISSUE?**

**ARE CERTAIN PROTECTED GROUPS
DISPROPORTIONATELY EXCLUDED?**



**Tip #4: You may
need to find other
data to see if a
policy *predictably*
results in a disparate
impact**





Who is the likely applicant pool?

What is the relevant market area?

*What are the other screening criteria
at the property?*



Resources for Finding Criminal Justice Statistics

- Bureau of Justice Statistics (DOJ)
- Vera Institute
- HUD portal (for HUD subsidized buildings)
- Census.gov

The investigator may have to contact state or local government or criminal justice agencies to obtain relevant criminal justice data.

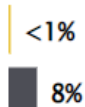


Racial Disparities in Incarceration

Black people are treated more harshly than white people at every stage of the criminal legal process. As a result, people of color—and Black people in particular—are incarcerated at strikingly higher rates than white people in jails and prisons across the country. The bar graphs below show the proportion of people in jail who are from each racial group against that group's share of the general resident population.

■ Resident population, as a percentage of total population ■ Asian American/Pacific Islander ■ Black/African American ■ Latinx ■ Native American ■ White

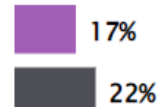
Asian American/Pacific Islander



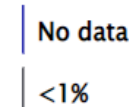
Black/African American



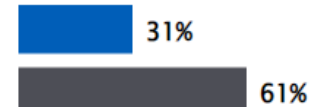
Latinx



Native American



White



Disabilities Reported by Prisoners: Survey of Prison Inmates, 2016

NCJ Number: 252642

Author(s):

Laura M. Maruschak, BJS Statistician; Jennifer Bronson, Ph.D., former BJS Statisticians; Mariel Alper, Ph.D., former BJS Statisticians

Date Published: March 2021

Annotation

This brief presents findings based on data collected in the 2016 Survey of Prison Inmates, a survey conducted through face-to-face interviews with a national sample of state and federal prisoners across a variety of topics, such as their demographic characteristics, socio-economic background, health, and involvement with the criminal justice system.

Abstract

This brief presents findings based on data collected in the 2016 Survey of Prison Inmates. a survey conducted through face-to-face interviews with a national sample of

Downloads

📄 Full report, 410K

📄 Data tables, 11K

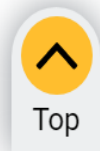
Search Publications

Forthcoming Publications

Research and 3rd Party Reports

Data Corrections

Rate This Page



characteristics, socio-economic background, health, and involvement with the criminal justice system. This brief on disabilities details statistics about demographics and types of disabilities reported by prisoners.

Highlights

- Nearly 2 in 5 (38%) state and federal prisoners had at least one disability in 2016.
- The most commonly reported type of disability among both state and federal prisoners was a cognitive disability (23%), followed by ambulatory (12%) and vision (11%) disabilities.
- Among all prisoners, 24% reported that a doctor, psychologist, or teacher had told them at some point in their life that they had an attention deficit disorder.
- Nearly a quarter of all prisoners reported participating in special education classes (24%).
- State and federal prisoners (38%) were about two and a half times more likely to report a disability than adults in the U.S. general population (15%).

Additional Details

Popular Topics [↗](#)

[Justice system](#)[Criminal justice systems](#)[Federal prisoners](#)[Inmates](#)[Surveys](#)

Similar Publications [↗](#)

[Incidence of Victimization at School and Away From School](#)[Immigration, Citizenship,](#)[Rate This Page](#)[Top](#)

2020 Census Demographic Data Map Viewer

A Story Map

United States
Census
2020

Population

Race alone

Race alone or in combination

Hispanic Origin

Housing

Group Quarters

Hispanic or Latino

Not Hispanic or Latino

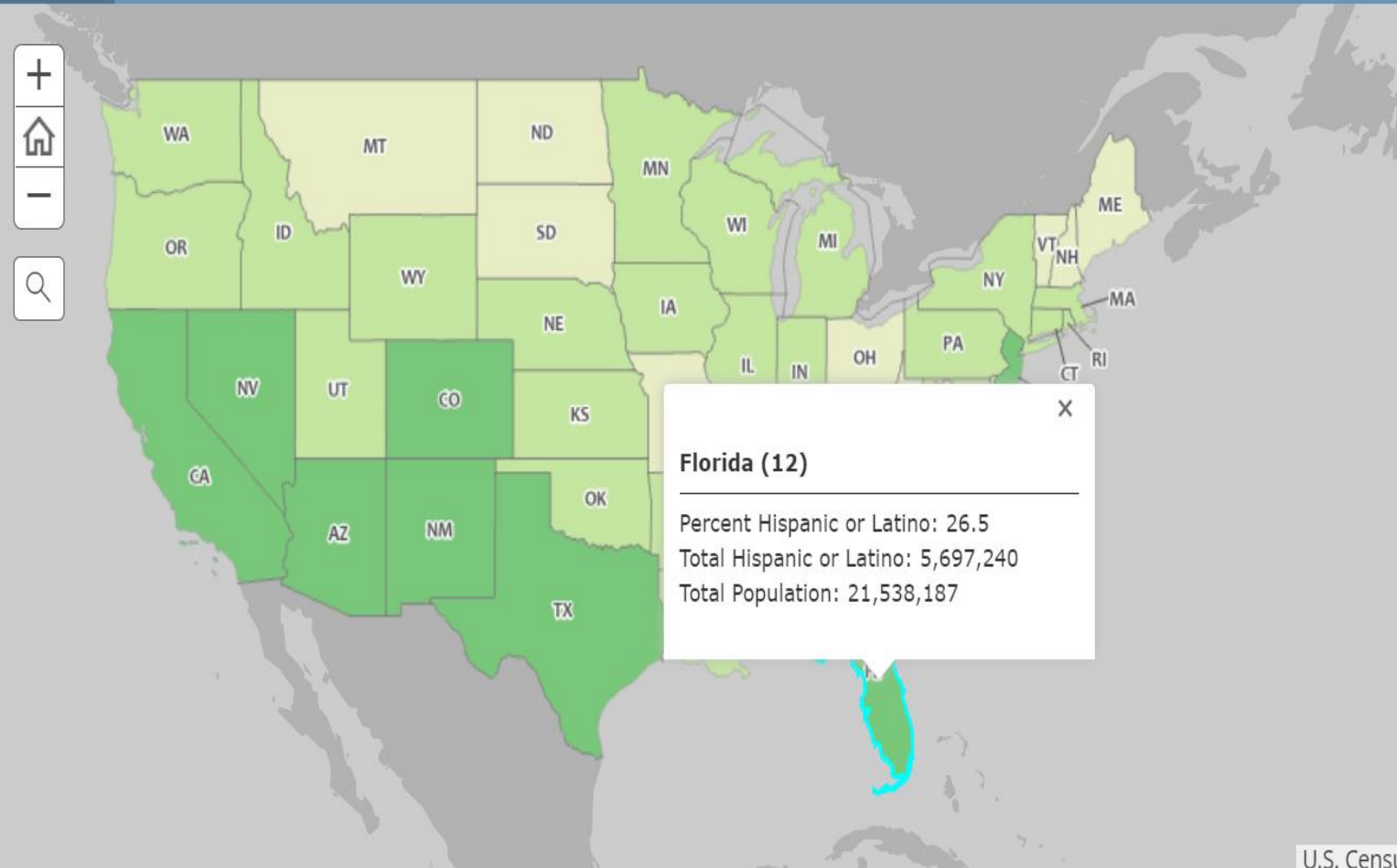
This map shows the percentage of the total population that reported their ethnicity as Hispanic or Latino from the 2020 Census at the state, county, and census tract levels. Zoom in to see county- and tract-level data. Click on the map to learn more.

Legend

State (or state equivalent) boundary

Percent Hispanic or Latino by state (or state equivalent)

- 50.0 or more
- 20.0 to 49.9
- 5.0 to 19.9



U.S. Census Bureau

POWERED BY
esri

2020 Census Demographic Data Map Viewer

A Story Map    United States[®]
Census 2020

Population

Race alone

Race alone or in combination

Hispanic Origin

Housing

Group Quarters

Hispanic or Latino

Not Hispanic or Latino

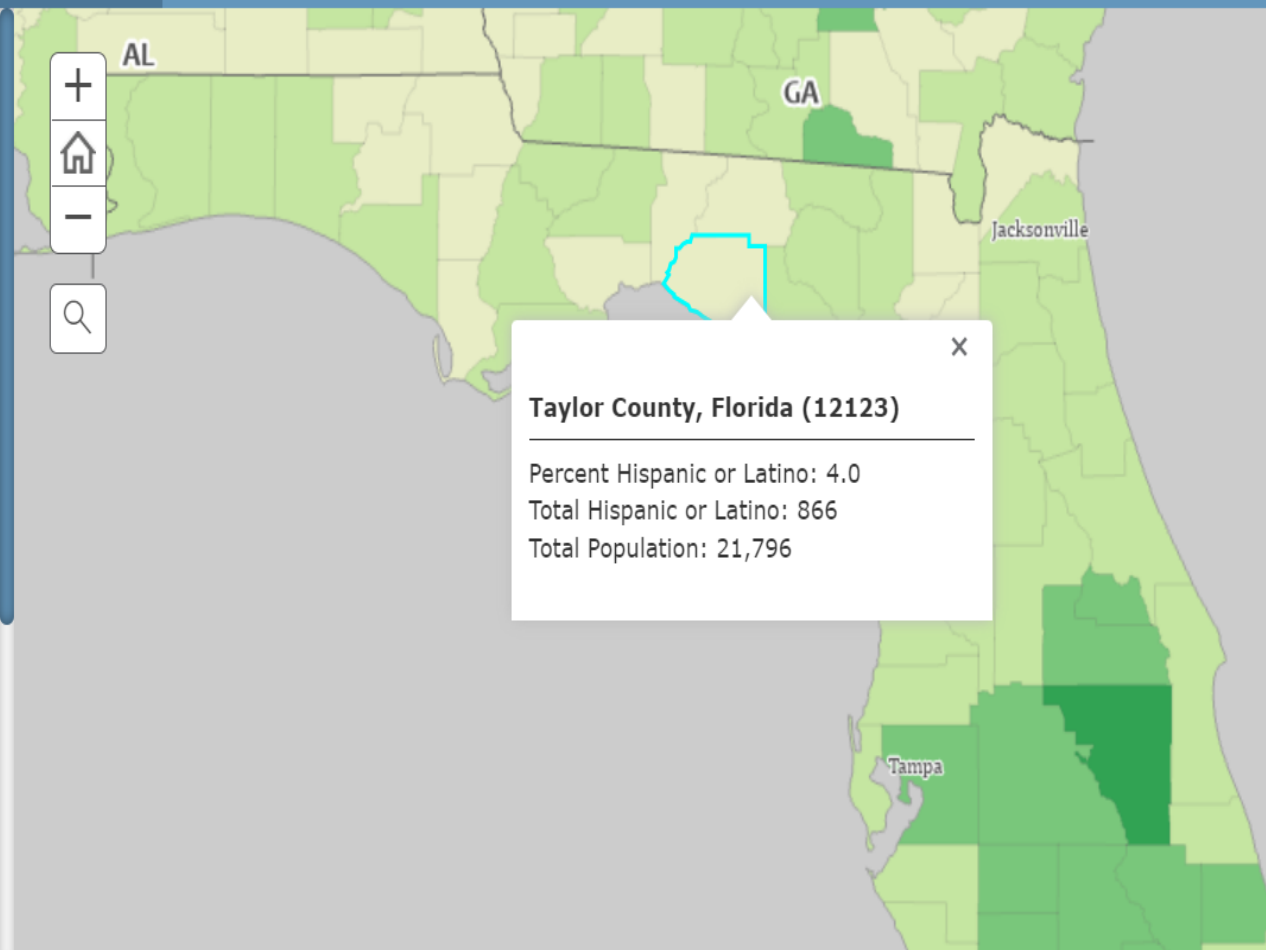
This map shows the percentage of the total population that reported their ethnicity as Hispanic or Latino from the 2020 Census at the state, county, and census tract levels. Zoom in to see county- and tract-level data. Click on the map to learn more.

Legend

State (or state equivalent) boundary

County (or county equivalent) boundary

Percent Hispanic or Latino by county (or county



U.S. Census Bureau

POWERED BY
esri



Best Practices for Landlords





Consider not using criminal history to screen tenants for housing.

"Criminal history is not a good predictor of housing success."





Common Misconceptions About HUD-public and Assisted Landlords

- 1) They are required to conduct general criminal background checks for their programs.



Common Misconceptions about HUD-public and Assisted Landlords

2) They have unlimited discretion to screen or evict for any criminal activity



Discretion is Limited by

- Program regulations and statutes;
- Various state and local laws;
- Fair housing laws – including those prohibiting policies with unjustified discriminatory effects

Limit Evictions Based on Criminal Activity



Never evict a person or family because they have been victims of criminal activity.

Evict for criminal activity only as a last resort (which includes conducting an individualized assessment to determine if the eviction is necessary).



**Don't ban a tenant's
invited guest from
visiting that tenant
based on the guest's
criminal
involvement**





If you choose to use criminal background screening policies or practices, there are many steps you can take help you avoid potential violation of the Fair Housing Act.



Conduct an individualized assessment that considers relevant mitigating information beyond that contained in an individual's criminal record.

This is likely to have less of a discriminatory effect than using categorical ban based on type of crime, etc. That doesn't take into account individual circumstances



But take care! Disparate treatment may occur in an individualized review process

One study found that when housing providers used discretionary criminal record screening policies — or policies that evaluated prospective tenants on a “case by case” basis—they favored white applicants over similarly situated Black applicants 55% of the time



The Importance of Evidence in Conducting Investigations

Natalie N. Maxwell, Managing Attorney
nmaxwell@nhlp.org

TYPES OF EVIDENCE

Evidence of Discriminatory Intent/Disparate Treatment

- May be proven by direct evidence, testing, or burden-shifting method.
- Video/audio recordings
 - Statements
 - Meetings
- Documents (especially publicly available documents that can be obtained during pre-suit investigations or testing):
 - Documents reflecting the policy
 - Documents reflecting the adoption/ passage of the policy and any amendments to it
 - Internal and external communications by relevant parties
 - Web sites

HOA Lease Requirements

Any applicant convicted of a felony within the ten (10) years immediately prior to the application date shall be disapproved. Similarly, any applicant convicted of a criminal charge within the ten (10) years immediately prior to the application date, which charge would constitute a felony in the State of Florida, shall be disapproved.

Any applicant convicted of a misdemeanor charge involving or relating to burglary, robbery, illegal drug use or sale, a violent act (committed or intended to be committed), nonconsensual sexual contact, prostitution, abuse or neglect of a child, abuse or neglect of a disabled person, abuse or neglect of an elderly person, abuse or neglect of an animal, driving while impaired or under the influence of illegal drugs or alcohol, a weapons offense, gambling, pornography or fraud within the seven (7) years immediately prior to the application date shall be disapproved.

Drug/Crime Free Lease Addendum

2. Resident, any member of the Resident's household, or a guest or other person under the Resident's control **shall not engage in any act intended to facilitate criminal activity**, including drug-related criminal activity, on, near or within sight of the premises.
3. Resident or member of the household **will not permit the dwelling unit inside or out to be used for, or to facilitate criminal activity**, including drug-related criminal activity, regardless of whether the individual engaging in such activity is a member of the household or a guest.
4. Resident or member of the household will not engage in the manufacture, sale, storage, transportation, use, possession or distribution of illegal drugs and/or drug paraphernalia at any location, whether on, near or within sight of the premises or otherwise.



KISSIMMEE CRIME FREE MULTI-HOUSING PROGRAM LEASE ADDENDUM



In consideration for the execution or renewal of a lease of the dwelling unit identified in the lease, Manager or Owner and Resident agree as follows:

1. Resident, any members of the resident's household, or any guest or any other person affiliated with the resident shall not engage in any criminal activity, on or near the said premises. "Drug-related criminal activity" means the ~~illegal, manufacture, sale, possession, distribution, use, or possession with intent to manufacture, sell, distribute, or use an illegal or controlled substance as defined in Chapter 893 of Florida Statutes.~~
2. Resident, any members of the resident's household, or any guest or any other person affiliated with the resident shall not engage in any act intended to facilitate criminal activity, particularly drug-related criminal activity, on or near the said premises.
3. Resident, any members of the resident's household shall not permit the dwelling to be used for, or to facilitate criminal activity, particularly drug-related criminal activity, regardless of whether the individual engaging in such activity is a member of the household or a guest.
4. Resident, any members of the resident's household, or any guest or any other person affiliated with the resident shall not engage in the unlawful manufacture, use, storage, transportation, use, possession or distribution of illegal drugs.

6. A VIOLATION OF ANY OF THE ABOVE PROVISIONS, AS DETERMINED AT THE SOLE DISCRETION OF THE OWNER OR OWNER'S AGENT, SHALL BE MATERIAL AND IRREPARABLE VIOLATION OF THE LEASE AND GOOD CAUSE FOR THE IMMEDIATE TERMINATION OF TENANCY. A single violation of any of the provisions contained herein shall be deemed material and irreparable non-compliance with the terms of this addendum. Unless otherwise provided by law, proof of a violation of this addendum shall not require a criminal conviction, but shall be by a preponderance of the evidence.
7. In case of conflict between the provisions of this addendum and any other provisions of the lease, the provisions of this addendum shall govern.

6. A VIOLATION OF ANY OF THE ABOVE PROVISIONS, AS DETERMINED AT THE SOLE DISCRETION OF THE OWNER OR OWNER'S AGENT, SHALL BE MATERIAL AND IRREPARABLE VIOLATION OF THE LEASE AND GOOD CAUSE FOR THE IMMEDIATE TERMINATION OF TENANCY. A single violation of any of the provisions contained herein shall be deemed material and irreparable non-compliance with the terms of this addendum. Unless otherwise provided by law, proof of a violation of this addendum shall not require a criminal conviction, but shall be by a preponderance of the evidence.
7. In case of conflict between the provisions of this addendum and any other provisions of the lease, the provisions of this addendum shall govern.
8. Should any provision of the addendum be ~~invalidated or determined to be~~ invalid in a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.
9. This LEASE ADDENDUM is ~~incorporated~~ into the lease executed or renewed this day between manager or Owner and Resident.

Resident Signature _____ Date _____

Resident Signature _____ Date _____

KISSIMMEE CRIME FREE MULTI-HOUSING PROGRAM WORKBOOK
Property Manager's Signature _____ Date _____

Name of Property _____

Evidence of Discriminatory Intent (cont.)

- Witnesses' statements/declarations
- Can be inferred from statements, including comments based upon stereotypes against protected classes
 - *“We are trying to address the influx of urban communities.”*
 - *“Domestic violence victims are responsible for the conduct of their perpetrators.”*

Evidence of Discriminatory Intent (cont.)

Can also be established by showing that housing provider is treating protected classes differently.

- *Rejection of Black applicant based on her criminal record, but admitted a White applicant with a comparable criminal record*
- *Leasing agent assisted a White applicant with getting approval of application despite disqualifying criminal history but did not provide similar assistance to non-White applicants*
- *Landlord evicts tenant with mental disability for new arrest but does not evict non-disabled tenant for new arrest*

Evidence of Disparate Impact

- May be proven by testing, statistical evidence, burden-shifting method and/or same evidence used to prove discriminatory intent
- Testing: [Unlocking Discrimination](#), by the Equal Rights Center (Oct. 2016)
- Local, state or national statistics re: racial and ethnic disparities related to the challenged policy (e.g., in the case of the criminal legal system, data re: arrests, convictions and incarceration)
 - *Jackson v. Tryon Park Apartments, Inc.*, Case No. 6:18-cv-06238, 2019 WL 331635 (W.D.N.Y. 2019)([Complaint](#))
 - *Alexander v. Edgewood Management Corporation*, Civil Action No. 15-01140 (RCL), 2016 WL 5957673 (D.D.C. July 25, 2016)([Complaint](#))
 - *Fortune Society v. Sandcastle Towers Housing Development Fund Corp.*, 388 F.Supp.3d 145 (E.D.N.Y. 2019) ([Complaint](#))

Evidence of Disparate Impact (cont.)

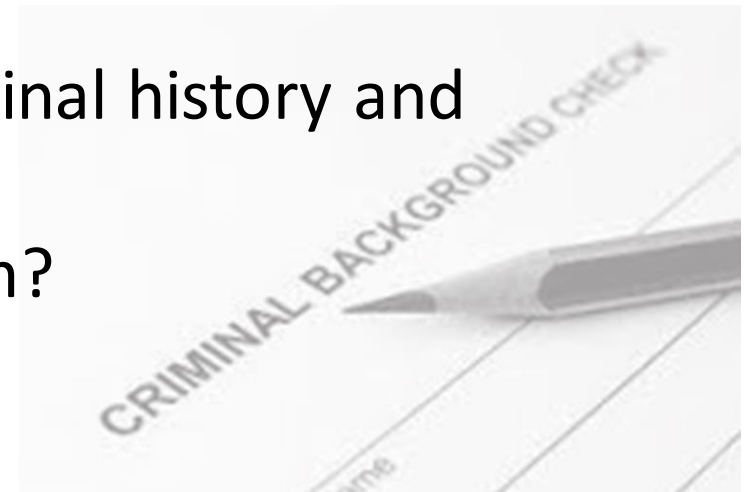
- Tenant selection plan
- Applicant data
- Census data
- Eviction data
- Tenant files
- Individualized assessment of relevant mitigating factors (the nature of the crime, circumstances surrounding criminal conduct, age at time of conduct, evidence of good tenant history, evidence of rehabilitation, etc.)

- Which tenant screening policy may be justified, i.e., necessary to achieve a substantial, legitimate, nondiscriminatory interest of a housing provider?
- Any applicant convicted of a felony within 5 years immediately prior to the application date will be denied.
 - Any applicant who has ever been convicted of manufacturing methamphetamine.
 - Any applicant who has been arrested.
 - None of the above.

INQUIRY AREAS FOR INVESTIGATING CLAIMS

Tenant Screening/Admissions Policies

- Are they in writing? Are they mandatory or discretionary?
- Do they request or consider records of criminal activity that fall outside the scope of their stated policies?
- Do they exclude people with arrests or convictions? Do they enforce blanket bans? What is the look back period?
- Consideration of mitigating circumstances related to criminal history?
- Do they offer an individualized assessment?
- Notice to applicants prior to denial based on criminal history and opportunity for applicant to explain?
- Screening conducted pursuant to a CFNO program?



- Are they in writing? Do the lease provisions require evictions of tenants or other household members due to arrests or convictions of tenants or their guests?
- Do they enforce blanket bans?
- Do they offer an individualized assessment?
- Eviction of entire household required pursuant to a CFNO program?

Crime Free Housing Programs & Nuisance Ordinances

- Does the program/ordinance rely on a vague or broad definition of disorderly conduct, nuisance, or other activity that triggers a violation, granting wide discretion to city officials to find violations?
- Are police calls for service an activity that triggers violation?
- Are arrests or convictions for domestic violence, battery, criminal trespass, criminal damage to property, noise, or disturbances an activity that triggers violation?
- Is the landlord required to evict all tenants in the home due to violation, regardless of whether the underlying conduct (1) is related to a protected status, (2) is based on crimes committed against tenants, (3) is based upon police contact that does not result in a conviction, or (4) is based upon behavior unrelated to the tenant's ability to perform under the terms of the lease.

Crime Free Housing Programs & Nuisance Ordinances (cont.)

- Is the landlord required to use a crime-free lease addendum, authorizing eviction of the entire household based on any alleged criminal activity of one tenant or guest, including alleged conduct by minors under state juvenile delinquency laws?
- Did the jurisdiction adopt the program/ordinance based on a perceived change in the demographics of a community connected to race, national origin, disability, or gender?
- Does the program/ordinance rely upon complaints by neighbors, giving them the ability to use the process to exclude and target renters of color in order to remove them from the community?
- Does the program/ordinance use a “bad tenant list” or other centralized database to share information about renters who should be evicted or not rented to?

BANNED

QUESTION & ANSWER

Enter questions into the Q&A box

CLOSING

- Slide presentation and recording of this event will be available on HUD Exchange
- Visit the NFHTA website for upcoming events and trainings: www.hudexchange.info/nfhta
- Evaluation and Feedback: Please complete the training survey

www.hudexchange.info/nfhta

THANK YOU



**National
Fair Housing**
TRAINING ACADEMY