



# Know Your Rights: Fair Housing & Criminal Records



## Where Can I Live? - Public vs Private Housing

Criminal background checks are regularly used to screen applicants for rental housing to determine whether they are a “qualified” applicant. **For those with a criminal record, these screenings create persistent barriers to obtaining housing.** Under Ohio law, **private housing** providers have the discretion to deny housing or evict people with criminal records. However, landlords may be open to civil liability if they apply that policy inconsistently or if that policy has a disparate impact on a protected class. Additional restrictions, based on the type of criminal offense, may apply to people seeking **public housing**. Public housing includes a wide variety of federally-assisted housing programs, such as individual and project-based housing vouchers.

## Admission Restrictions Based on the Type of Offense

### Violent Offense

- Federally-assisted housing programs may deny housing to:
  - (1) people currently engaged in “**violent criminal activity**,” or
  - (2) people who engaged in “violent criminal activity” **during a reasonable time before admission.**

### Sexually Oriented Offense

- Lifetime sex offender registrants are permanently barred from most public housing programs.

### Other Offenses

- Federally assisted housing programs may deny public housing to:
  - People **currently engaged in**, or people who **engaged in during a reasonable time before admission, criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises** by nearby residents, or staff of the property owner or Public Housing Agency.
- PHAs may deny assistance if:
  - (1) a family member was evicted from federally assisted housing within the previous five years, or
  - (2) a family member has had PHA assistance terminated before.
- Neither federal nor Ohio laws require housing to be provided to people whose tenancy would be a direct threat to others’ health or safety, or result in substantial physical damage to others’ property.

### Controlled Substance Offense

- A person **cannot be admitted** to most public housing if:
  - the person is **currently using a drug illegally**, or
  - the housing provider reasonably determines that **a person’s illegal use of a drug or abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents**, or
  - they have **an eviction less than 3 years ago from federally assisted housing for drug-related criminal activity** unless they completed drug-rehabilitation or the eviction circumstances no longer apply, or
  - they were convicted for the manufacture or production of methamphetamine on federally assisted housing premises.
- Public Housing Providers may reject applicants who engaged in **drug-related criminal activity within a reasonable time beforehand.**
- A Public Housing Agency (PHA) may require applicants to provide additional information from drug abuse treatment facilities.
- A housing provider **cannot ask whether an applicant has a disability** (such as recovering from substance abuse), but they may ask whether the applicant:
  - (1) currently uses a controlled substance in violation of the law, or
  - (2) has been convicted of an offense with an element of the offense including “the illegal sale, offer to sell, cultivation, manufacture, other production, shipment, transportation, delivery, or other distribution of a controlled substance.”

# What Does Discrimination Look Like?

According to HUD Guidance, a **housing provider must prove that their criminal record policy serves a legitimate and substantial interest**; this “interest” usually refers to tenant/property safety.

**Blanket bans**, or a total denial of any person with any criminal conviction over any period of time, **cannot be used by a housing provider** because the housing provider will be unable to show that their criminal record policy serves a legitimate and substantial interest.

While **criminal record status is not a protected class** under the Fair Housing Act, a housing provider cannot use their criminal record policy as a proxy to discriminate against members of a protected classes. Housing providers are prohibited from using a criminal record policy that intentionally targets a protected class of people. Moreover, **housing providers are also prohibited from using a policy which has a disparate impact on members of a protected class.**

## Important Terms

**Protected Class:** Protection from illegal discrimination based on race, color, religion, sex, sexual orientation, gender, disability, familial status, or national origin. (In Ohio military status and ancestry are also protected.)

**Disparate Impact:** When a neutral policy disproportionately affects members of a protected class compared to members of a non-protected class

Discrimination through the use of a criminal record policy takes many forms. **These are examples of illegal discrimination specified by HUD:**

- **Disparate Treatment:**

- A landlord has a written policy that requires rejections for persons with felony convictions less than two years old, but the prospective tenant says they were told by housing staff that their application would be rejected based on any felony conviction regardless of date.
- A housing provider routinely advises Native American applicants about a criminal records screening policy but does not advise white applicants about the policy.

- **Disparate Impact:**

- Data showing that Black individuals comprise 65% of the housing provider’s applicants but 95% of those rejected under a policy to deny based on an arrest indicates that the policy likely has a disproportionate impact on Black applicants.

## Next Steps & Who to Contact

**For questions about housing discrimination, fair housing, or tenant-landlord law, contact HOME.**

- Call (513)-721-HOME (4663) or visit [www.homecincy.org](http://www.homecincy.org)

**For individuals wishing to consult an attorney, contact the Ohio Justice & Policy Center:**

- Contact Ashley Ward, Ohio Access to Justice Foundation Justice for All Fellow, by registering for the Second Chance Legal Clinic at [www.ohiojpc.org](http://www.ohiojpc.org)

---

The work behind this publication was supported by funding under a grant with the U.S. Department of Housing and Urban Development (HUD). The substance and findings of the work are dedicated to the public. Housing Opportunities Made Equal (HOME) is solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the Federal Government.

Disclaimer: HOME and OJPC presents the information on this factsheet as a service to members of the general public. While the information on this page is about legal issues, it is not intended as legal advice or as a substitute for the particularized advice of an attorney. For answers to specific questions, it is best to consult an attorney.