



Know Your Rights: Fair Housing & Criminal Records



When Can I Be Lawfully Evicted? - Public vs Private Housing

Under Ohio law, private housing providers have the discretion to evict people with criminal records. However, they 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 private and public housing.

Lease Restrictions Based on the Type of Offense

Any Felony Offense

- A Public Housing Agency may terminate a lease if the tenant is:
 - (1) **fleeing to avoid prosecution or custody for a felony** under the laws of the place from which they fled, or
 - (2) **violating a condition of probation or parole.**

Sexually Oriented Offense

- A landlord may evict a tenant based on sexually oriented offenses **if all of the following criteria are met:**
 - (1) the premises are within 1,000 feet of any school or childcare premises;
 - (2) a household member is on the state registry of sex offenders and child-victim offenders; and
 - (3) the state registry indicates that the household member was convicted of or pled guilty to a sexually oriented offense or a child-victim offense and was not sentenced to a serious youthful offender dispositional sentence for that offense.

Other Offenses

- A Public Housing Authority may terminate a tenancy for:
 - (1) any violation of the tenant obligation to ensure that tenants, household members, and guests do not **engage in any criminal activity that threatens the health, safety or right to peaceful enjoyment of the premises** by other residents;
 - (2) **criminal activity** (regardless of whether an arrest or conviction occurred);
 - (3) the tenant is **violating a condition of probation or parole**; or
 - (4) the **later discovery of tenant's ineligibility.**
- **If provided in the lease**, landlords for subsidized projects, except for the Section 8 Existing Housing Certificate or the Housing Voucher Program, may evict tenants for:
 - (1) **any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises** by other residents or people near the premises;
 - (2) **fleeing felony prosecution or confinement**, or
 - (3) **violating a probation or parole condition.**

Controlled Substance Offense

- A Public Housing Agency **must terminate** an existing tenancy with a person **convicted for manufacture or production of methamphetamine** on federally assisted housing premises.
- The Public Housing Authority **may terminate** a tenancy for:
 - (1) any violation of the tenant obligation to ensure that tenants, household members, and guests do not engage in **any criminal activity or abuse of alcohol that threatens the health, safety or right to peaceful enjoyment of the premises** by other residents;
 - (2) any violation of the tenant obligation to ensure that tenants, household members, and guests do not **engage in any drug-related criminal activity on or off the premises;**
 - (3) **criminal activity;**
 - (4) **alcohol abuse;** or
 - (5) the **later discovery of the tenant's ineligibility.**
- Landlords for **subsidized projects**, except for tenant assistance with Section 8 Existing Housing Certificate or Housing Voucher Program, **may evict tenants for:**
 - (1) tenants, household members, or guests **illegally using a drug on or near the premises;** or
 - (2) illegal drug use or alcohol abuse by tenants, household members, or guests that **interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.**
- **Ohio law requires** that a landlord evict a tenant if:
 - (1) the tenant **does not leave the premises within three days of the notice of the lease termination;** and
 - (2) **the landlord knows or reasonably believes that the tenant** or a person on the premises with the tenant's consent previously or presently **is engaged in a drug offense or controlled substance offense.**

What Does Discrimination Look Like?

According to U.S. Department of Housing and Urban Development (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 classes.)

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 housing provider evicted a Black tenant who was convicted of a crime but did not evict a white tenant who was convicted of a crime.
- A 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.

- **Disparate Impact:**

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

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

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

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.