



Know Your Rights: Fair Housing & Criminal Records



When is a Criminal Background Check Discriminatory?

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.** 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 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

Understanding “Individualized Assessments”



When considering an applicant’s criminal record, HUD Guidance **requires a housing provider to conduct an “individualized assessment,”** of all relevant mitigating information, including information beyond what is contained in the individual’s criminal record.

Relevant individualized evidence includes:

- The facts or circumstances surrounding the criminal conduct;
- The nature and severity of the offense;
- The 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; and
- Evidence of rehabilitation efforts.

The core of the individualized assessment is determining whether, **based on objective evidence**, the individual’s tenancy would pose a **direct threat to the health and safety of other individuals** or would result in **substantial physical damage to the property of others.**

What Does an Individualized Assessment Look Like?

Consider this example: A prospective tenant indicates that on an application that they were convicted for possessing a small amount of marijuana ten years ago. Since their conviction, the applicant has had no other criminal history and has a history of being a good tenant. The apartment manager rejects their application based solely on their prior conviction.

This rejection is unlawful because the manager did not conduct an individualized assessment of the applicant. The landlord should have considered the circumstances, nature, and severity of the conduct, and the evidence of rehabilitation. There is no objective evidence that the applicant would pose a threat to other residents or the property, and thus their criminal record cannot be the sole justification for their denial.

What Does Discrimination Look Like?

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 people who have felony convictions less than two years old, but housing staff rejects applications based on any felony conviction regardless of date.
- A housing provider rejects a Black applicant with a criminal record but accepts a white applicant with a criminal record.
- A housing provider routinely advises Native American applicants about a criminal records screening policy but does not advise white applicants about the policy.
- After learning that an applicant was previously homeless and hospitalized for treatment of a mental health condition, a management company departed from its standard procedures and conducted a criminal background screening of the applicant.

- **Disparate Impact:**

- Data showing that Black individuals comprise 65% of the housing provider's tenants, but 95% of those evicted based on an arrest, indicates that the policy likely has a disproportionate impact on Black tenants.
- A locality applies a crime-free ordinance that requires the eviction of criminally-involved residents, but data shows that Black and Hispanic communities are disproportionately impacted by the criminal justice system and thus more likely to be evicted under the ordinance.

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

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