

HOUSING INFORMATION SERIES

Obtaining Housing for People with Criminal Histories

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for

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Housing Information Series

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Introduction

Nursing home transition is a complex process that can be made even more challenging if the individual who is seeking rental housing in the community has a criminal record. The policies and practices of both local Public Housing Authorities and private landlords vary from community to community. As a result, Nursing Home Transition Coordinators, Aging Care Managers, Support Coordinators and others need to not only understand federal, state and local laws and policies, but also the importance of establishing cooperative working relationships with Public Housing Authorities and private landlords.

This paper, as presented in a question and answer format, is designed to provide accurate information to agencies and individuals about these laws and policies, and to provide practical strategies for maximizing housing opportunities for persons with justice involvement. This document will review: resources available to assist individuals with justice involvement in addressing the challenges they may face when applying for housing; the laws that govern Public Housing Authority admission policies; strategies for working with your local Public Housing Authority; partnerships with private landlords in your community; and applicable Fair Housing laws.

Is there anything that individuals with a history of justice involvement can do to prepare for obtaining housing?

The Prepared Renters Program (PREP), a collaborative effort between PHFA and the Self Determination Housing Project (SDHP), is a program designed to provide individuals with the tools they need to become successful renters. PREP explains how prospective renters can prepare to address any challenges they may face when searching for housing. In addition to strategies for overcoming criminal history, PREP training topics include: assessing housing needs; understanding the language of a lease; communicating with a landlord; creating and working within a budget; repairing credit; understanding a difficult housing market; choosing affordable housing in a desirable location; and avoiding discrimination. The training also includes tips on being a successful tenant once housing is obtained.

The PREP program is provided through a train-the-trainers model by representatives of SDHP's Regional Housing Coordinator Project. SDHP's Regional Housing Coordinators, known as RHCs, are available to provide free half-day training for your agency's staff. Visit http://www.sdhp.org/rhcs/rhcs_copy.htm to find your local RHC.

¹ This paper contains information excerpted and modified from a publication of the PA Office of Mental Health and Substance Abuse Services entitled *Housing and the Sequential Intercept Model: A How-To Guide for Planning for the Housing Needs of Individuals With Justice Involvement and Mental Illness* prepared by Diana T. Myers and Associates, Inc.

Is there any special housing that individuals with criminal records should seek?

In most circumstances, individuals with justice involvement should apply to all housing programs that meet their needs and preferences. Exceptions to this may relate to the type of conviction, the length of time that has elapsed since conviction, and the admissions policies of housing programs within their community.

As many of the individuals you will be assisting to transition have limited and/or fixed incomes, a large percentage of these individuals will need subsidized or affordable housing. In many communities, the Public Housing Authority (PHA) is the primary resource for accessing subsidized housing. Unfortunately, the PHA often has the most stringent admissions policies of any housing provider in your community for individuals with justice involvement. In addition, in many communities the PHA waiting list is very long or even closed. In these cases, private landlords may be a more viable option since the criminal record policies of private landlords and property managers are often more flexible than those of the PHA.

What are the federal policies governing admission of individuals with a criminal record by Public Housing Authorities?

The U.S. Department of Housing and Urban Development (HUD) requires all PHAs to perform criminal background checks on all applicants. In addition, federal law requires all PHAs to permanently ban admission to applicants for two specific offenses²:

1. Conviction of methamphetamine production on the premises of federally-funded housing, and
2. If the applicant is subject to a lifetime registration requirement under a state sex offender registration program.

When do PHAs have discretion to set local policies?

PHAs have a great deal of flexibility to create local admission policies for individuals with certain histories of criminal activity and the use of illegal substances. PHAs can decline admission to:

1. Individuals who have engaged in any drug-related or violent criminal activity or other criminal activity during a reasonable time period prior to the application for housing if it would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents.

² Legal Action Center. *Safe At Home: A Reference Guide for Public Housing Officials on the Federal Housing Laws Regarding Admission and Eviction Standards for People with Criminal Records*. Fall 2004.

2. Individuals who are illegally using a controlled substance, or have a history of abuse of drugs or alcohol that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents.

3. Any individual that has been evicted from federally assisted housing because of drug-related criminal activity in the previous three years. This includes individuals and household evicted under HUD's "One Strike" policy. Under this policy, evictions may occur if any member of a household or guest of a household engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or any drug-related criminal activity, on or off the premises.

For each of these circumstances, local PHAs have the discretion to define the concept of "reasonable time period", shorten the period of time an individual/household is restricted from admission, and consider other factors such as the severity of the crime and the completion of any rehabilitation programs.

How do I find the criminal record policy for my local Public Housing Authority?

As described above, with the exception of the two federally required admissions bans, each Public Housing Authority can set its own criminal record policy. Furthermore, the PHA can set different criminal record policies for each of their housing programs. For example, the criminal record policy may be more restrictive for conventional site-based public housing than for the Section 8 Housing Choice Voucher Program, which is a scattered site rental assistance program.

Information about your PHA's criminal record policy can be found within two separate plans, the PHA Plan and the Administrative plan.

- The PHA Plan provides an overview of the PHA's policies, programs, operations, and strategies for meeting local housing needs and goals. The PHA Plan is described through a template and submitted to HUD annually. HUD approved PHA Plans can be accessed on the HUD website at http://www.hud.gov/offices/pih/pha/approved/view_approved_plans.cfm.
- The Administrative Plan provides information on the operations of the PHA, including waiting list procedures, policies for special housing types, and admissions policies including policies regarding admission of individuals with criminal histories. This Plan will provide more detail about the PHA's criminal record policy than the PHA Plan. You can request a copy of the Administrative Plan directly from your PHA.

Based in these policies can I assume that most people with whom I am working will be denied admission to PHA housing?

In many communities, there is a standing belief that if an individual has a criminal record they are not eligible for assistance from the PHA. However, most PHA policies do not uniformly restrict housing to all individuals with justice involvement. For this reason, it is

imperative that you review and understand the written policy for each PHA you are working with.

Once you obtain and review the written policy, you may want to request a meeting with the PHA in order to establish a better understanding of what their policy truly means. When reviewing the Plan and/or meeting with the PHA, you will want to explore the following issues:

- Do the local PHA policies for admission of persons with criminal records exceed the two federally required bans?
- If so, what are the PHA restrictions regarding admission of offenders with certain types of crimes?
- Is the policy based on actual convictions or only arrests?
- What is the required waiting period between the crime and eligibility for admission?
- Does the waiting period begin at the time of arrest, conviction, or release from jail/prison?
- Can an individual be on the waiting list during the ineligible time period?
- Are there exceptions for individuals who have successfully completed certain treatment programs, such as drug rehabilitation?
- Is the policy different for public housing and the Housing Choice Voucher Program?
- Does the wording suggest that the PHA is willing to review these matters on a case-by-case basis?

The PHA policy excludes my client... now what?

Once you understand the PHA's criminal record policy, how do you proceed if the policy is restrictive to your client? Because each PHA has the flexibility to develop its own policies, the answer to this question will vary in each community. In most circumstances, the next step will likely be to start working with your Public Housing Authority in order to address your concerns. However, convincing your PHA to amend their criminal records policy will likely not be an easy task. In most communities the demand for affordable housing far exceeds the supply. As such, expanding the availability of an insufficient supply of resources to individuals with justice involvement may not be a popular stance. The key to your success will likely be based on your relationship with the PHA.

What steps can I take to start working with our Public Housing Authority?

One of the most pro-active steps you can take is to work on developing a personal relationship with the PHA's Admissions Department. Once you inform them of the work you are doing, the type of individuals you are working with, and the type of criminal histories you typically see, they may be more willing to work through these issues on a case-by-case basis.

If you and/or your agency do not already have a working relationship with your local PHA, another strategy you may want to consider is to meet with the local housing

coalition and/or other service providers in your community. These groups/providers may be working with the PHA on this or other similar issues. In this case, the most beneficial strategy may be to become part of these groups. However, if there are no other groups/providers working on this issue, you may have to go it alone.

How can I prepare for a meeting with our Public Housing Authority?

Whether meeting with your PHA individually, or as part of a larger group, below are some suggestions in order to prepare for that meeting.

1. Provide the PHA with any data or documentation you have regarding the individuals you are working with who have a history of justice involvement. This can include: a) compelling examples of individuals who would be good tenants but were denied assistance; b) specific examples of individuals who have been convicted of minor non-violent crimes that are not eligible for housing assistance under the current policy; and c) examples of restricted individuals with crimes that occurred a number of years ago.
2. Use these examples to express your concerns about the restrictions and explain how this impacts the individuals with whom you are working.
3. Most importantly, take the opportunity to learn about the PHA's concerns and/or needs regarding individuals with justice involvement who are transitioning from nursing homes, or other populations with whom you are working. You can then explore specific ways of addressing their concerns.

What other strategies can I consider for working with our PHA?

The PHA has the housing resources that the individuals you are assisting to transition need. Does this mean that the PHA has all the power in this newly formed relationship? Maybe at first, but you can work to change this by creating a partnership. The Merriam-Webster Dictionary defines partnership as “a relationship... usually involving close cooperation between parties having specified and joint rights and responsibilities”³.

Part of developing a partnership with your PHA will involve determining what you can bring to the relationship. These may include:

- Support services to qualifying individuals who are already living in a PHA-owned or subsidized property.
- A single contact person for the PHA to call if there is a service or health related problem with the tenant.

³ Accessed from <http://www.merriam-webster.com/dictionary/partnership>, 2/18/11.

- A Memorandum of Understanding that guarantees the availability of supports to the tenants you refer.
- On-going communication between the PHA and the agencies serving individuals with justice involvement. For example, several PHAs have staff members who participate in monthly meetings with local service providers to communicate concerns about the coordination/availability of services.

What else can I do once I establish a relationship with my PHA?

Once an amicable partnership has been established, you may want to work with the PHA on specific ideas to create more housing opportunities for individuals with justice involvement. For example, you may want to explore:

- Establishing a pilot project specifically for certain individuals with justice involvement. For example, if the current policy is to allow admission to a person with a drug related conviction after five years, ask to have that reduced to two years for an individual that demonstrates success in a bridge housing program.
- Establishing a pilot project that would allow certain individuals with justice involvement to be on the waiting list during their ineligible waiting period. This would be ideal in communities with long waiting lists for individuals who are only temporarily restricted from housing assistance.
- PHA participation in a Nursing Home Transition Tenant Based Rental Assistance (TBRA) program. Through this program, individuals transitioning from a nursing home are eligible to receive up to two years of rental assistance funded by the PA Department of Public Welfare (DPW). A pilot project might be established to enable individuals with justice involvement to obtain housing assistance through the PHA if the individual successfully maintains their housing during the two year period when the Nursing Home Transition TBRA is subsidizing their rent.
- Establishing a set-aside of units. Although most PHAs have very long waiting lists for their Housing Choice Voucher Program, some PHAs have shorter waiting lists for their public housing units. Since PHAs strive for full utilization of all resources, they might have an incentive to set-aside some of the vacant units for individuals with justice involvement (or individuals transitioning from an institution, etc.) in return for assurance that case management and other services will be made available to the tenants occupying those units.
- Establishing/expanding a preference group. In many cases, the PHA's criminal record policy may not be restrictive to an individual you are assisting to transition. For example, if an individual committed a crime ten years ago, the existing policy may have no bearing on this individual's eligibility. In these circumstances, the primary housing barrier may be the length of the PHA's waiting list. One strategy is to determine if the individuals you are assisting with transition are included in an

existing preference group established by the PHA (i.e. for persons with disabilities, persons transitioning from an institution, etc.). If there are no relevant preference groups, you may want to explore establishing a preference group for the individuals you are serving. Individuals in a preference group move up faster on the waiting list than those without a preference. Additionally, the PHA has the option to keep the waiting list open at all times for individuals within a preference group.

What steps can I take if we are unsuccessful getting current policies modified?

If none of the above system-level approaches work, you have two alternatives:

1. You can address the policy on a case by case basis. If an individual is denied admission by the PHA, he/she can appeal the decision. PHAs are required to provide applicants with written notice of a decision denying assistance. The notice will include a brief statement describing the reason for denial, as well as information about how to request an informal review with PHA staff regarding the denial. Applicants will be required to initiate the review process in writing within a designated number of days⁴. Legal representation and/or additional support may be available from Legal Aid. Visit <http://www.palegalaid.net/resources/clients/legalhelpfinder> to locate Legal Aid in your community.

Prior to meeting with PHA staff, applicants will want to prepare a response and collect applicable supporting documentation to further his/her case. Even if the reason for denial appears to be justified based on program eligibility, the applicant should consider appealing the housing authority's denial to determine if they are entitled to a reasonable accommodation under the Fair Housing Act based on a disabling condition. A reasonable accommodation is a change in policies, practices, or services when such a change may be necessary to afford a person with a disability equal opportunity and access to use and enjoy a dwelling. If an individual with a disability can make the case that their crime was linked to their disability, they may be able to qualify through this provision. This concept will be defined and further discussed on page 12.

2. Your second option is to reach out to private landlords and property managers.

Do private landlords have similar policies about leasing to individuals with justice involvement?

Individuals with justice involvement may also find it difficult to obtain housing from private landlords. While they have no federal mandates guiding their policies, many landlords examine several factors in potential tenants, including: criminal background,

⁴ For a sample letter to initiate the appeal process, see page 33 of Mass Legal Help's *Legal Tactics: Finding Public and Subsidized Housing Third Edition, 2009*. Accessed from: <http://www.masslegalhelp.org/housing/finding-public-and-subsidized-housing/challenging-a-denial-of-housing.pdf>

income, employment, credit history, and rental history. These present very real challenges for individuals with a history of justice involvement, as many of these other factors can be negatively effected during incarceration.

While there are significant similarities, there are also significant differences between public and private housing providers. Public Housing Authorities receiving public funds must adhere to specific rules and regulations governing occupancy, eviction and other matters that private housing agencies do not have to follow. In addition, while both public and private landlords must adhere to laws that protect specific classes of individuals from discrimination, private landlords have more flexibility than Public Housing Authorities in deciding who to admit.

How can I find landlords that might be willing to work with us?

It is important to identify landlords that are flexible and willing to work with individuals with justice involvement. A good first step for finding potential landlords is to contact your local Public Housing Authority. The PHA should have a list of landlords who participate in the local Section 8/Housing Choice Voucher program. These landlords are already used to working with public agencies and programs and with individuals with special circumstances. They are also familiar with a system where a third party provides rental assistance and are accustomed to maintaining a level of occupancy standards.

Your local Regional Housing Coordinator (RHC) may also be able to connect you with private landlords who have a history of working with individuals with special circumstances.

What about my local Landlord Association?

The local landlord association is another resource for identifying private landlords. You may want to contact your local association in order to identify a time for you to provide their members with information about your work. One possibility may be to attend an association's meeting. In addition to providing local landlords with information on the benefits of partnering with service providers and various public programs (see strategies below), you may be able to identify a couple of landlords who would be interested in working with you. If you are able to partner with one or two landlords, their positive experiences may be used later to encourage other landlords to rent to individuals with justice involvement. For a list of landlord associations throughout the Commonwealth, visit the Pennsylvania Residential Owners Association at <http://www.proassoc.org/cgi-bin/PROAOrgs.pl>.

What strategies might we use to encourage participation by more private housing providers?

The Pennsylvania Association of Area Agencies on Aging recently published a monograph entitled *Ten Ways to Boost Housing Opportunities Working with Private*

Housing Providers that explains the benefits of partnerships between public agencies and private housing providers and outlines specific strategies for expanding housing options for people with disabilities. Many of the actions included in that monograph are applicable to individuals with justice involvement. The full report can be downloaded at: www.pahousingchoices.org/documents/10_ways_private_housing.pdf.

Several of the specific steps described in the monograph involve building on-going relationships/channels of communication with the private housing providers through focus groups, regular meetings, surveys, and written or web-based information. Many landlords are unaware of resources that can benefit them and their tenants. Regular communication provides the opportunity to inform them about resources and programs that they can take advantage of, including weatherization, resources for home modifications, low interest loan programs for property renovations and/or support services from local providers. Communication goes two ways, of course, and can also serve to inform your group about any problems experienced by the landlords and any needs or requirements they may have for making their units available to individuals with justice involvement.

What type of concerns might private landlords have about renting to individuals with justice involvement?

Many communities across Pennsylvania have been hosting landlord focus groups in order to engage private landlords in discussing barriers to their renting to individuals with justice involvement, as well as introducing them to resources available within their communities. These focus groups revealed that like Public Housing Authorities, private landlords are primarily concerned with: getting good, long-term tenants; minimizing vacancies; collecting their rents on time; and ensuring the quiet enjoyment of their units by all residents.

In general they reported good experience with tenants with disabilities. In fact, one landlord stated “Percentage –wise I have more problems with the general population than I do with people with disabilities. I welcome them.” Other valuable information gleaned from the focus groups was:

1. Landlords were willing to provide housing to individuals with criminal records with certain exceptions, mostly related to renting to sex offenders and arsonists.
2. When ongoing services or case management are provided to individuals with criminal records, landlords are even more willing to provide housing the individual. Landlords indicated that the provision of ongoing services provided with the comfort of having a person to call if there are any problems that arise.
3. Landlords were willing to overlook poor credit histories on a case-by-case basis.

What kinds of financial incentives might be available to motivate landlords to rent to individuals with justice involvement?

There are a number of government programs that provide rental assistance to eligible households to help them to afford private market rental housing. Tenant Based Rental Assistance (TBRA) programs the difference between the fair market rents and the tenant's ability to pay (generally 30% of household income). The Section 8/Housing Choice Voucher Program, administered by the Public Housing Authority, is the most common TBRA program, but commonly has long waiting lists. In order to provide more expedient resources to individuals looking to transition from nursing homes, PA's Department of Public Welfare (DPW) and PHFA have partnered to provide rental assistance through the State's Nursing Home Transition TBRA program (NHT TBRA). The NHT TBRA program provides rental assistance in order to provide the necessary resources to support individuals moving from nursing homes into the community before a permanent rental subsidy is obtained. Assistance is available for up to two years to individuals on waiting lists for public housing, the Section 8/Housing Choice Voucher program, or other subsidized/assisted housing programs.

Note: Some communities also fund bridge or short term rental assistance using other resources. These short term vouchers can generally be used for up to two years, at which time the family should be self-sufficient or transfer to a permanent TBRA. Eligibility for these programs will vary by community.

Are there any other incentives to motivate landlords to rent to individuals with justice involvement?

Successful incentives for private landlords are those that address the four concerns listed above: collecting their rents on time; getting good, long-term tenants; minimizing vacancies; and ensuring the quiet enjoyment of their units by all residents. General incentives to the landlord include the following:

1. The landlord will be assured of receiving at least a portion of his/her rent on time through a subsidizing agency;
2. He/she will have a source of reliable tenants; in some cases the referring agency will even assist in pre-screening, certifying or training tenants;
3. The referring agency can guarantee a steady stream of tenants, thus minimizing vacancies and cost of advertising for new tenants; and
4. The referring agency can serve as a single point of contact for discussion of issues regarding the tenant.

Can Fair Housing laws protect individuals with justice involvement?

Federal Fair Housing laws protect 7 specific groups of individuals. These include discrimination on the basis of:

- Sex
- Race
- Age
- Disability
- Color, Creed or National Origin
- Religion
- Familial Status

Although fair housing laws do not protect individuals simply because of their history of justice involvement, fair housing laws can be a resource to individuals within a protected class. In order for an individual with justice involvement to use fair housing laws to contest the denial of housing admission, there would need to be a direct connection between the crime committed and one of the protected classes. For example, if an individual with a disability was convicted of shoplifting because they stole medication they needed but could not afford to buy, they may be protected under fair housing laws. In this example, the PHA or landlord may be willing to make an exception to the existing admission policies. Such an exception would be called a reasonable accommodation. Reasonable accommodations are changes in rules, policies, practices, and the way services are provided in order to ensure equal opportunity.

More common than the example described above, is the use of fair housing laws when housing has been denied because of age, disability, or factors associated with another protected class. The Fair Housing Council of Suburban Philadelphia provides summaries of Fair Housing Laws, including how these laws are applied and the use of reasonable accommodations, on their website at www.fhcsp.com.

Conclusion

Assisting individuals in moving from a nursing home to a new home in the community is challenging in many ways. Due to the admissions policies of both public and private housing providers, the challenge can be even greater if the individual has a history of justice involvement. Therefore, a clear understanding of current rules and practices is critical. This paper clarifies HUD policies and local Public Housing Authority (PHA) discretion in admitting individuals with a history of justice involvement. It also provides information on policies and practices of private landlords. Finally, it provides a number of strategies for working with both public and private housing providers to increase housing opportunities for people with a history of justice involvement.

Technical assistance can be made available to your agency if you are interested in implementing one or more of these strategies to expand housing options for individuals with justice involvement. To learn more about available technical assistance, contact Sharon Wilkes at the PA Office of Long Term Living (OLTL) at swilkes@state.pa.us or Crystal Lowe at the Pennsylvania Association for Area Agencies on Aging (P4A) at Crystal@p4a.org.