

Criminal Background, Arrest and Conviction Record and Fair Housing

The United States Department of Justice advises that more than 650,000 ex-offenders are released from prison every year¹, and social scientists and legal scholars now estimate up to **65,000,000 people are living with a criminal conviction in the U.S.**² A high percentage of those 65 million are African-Americans and Latinos³, and we therefore believe that housing policies that ban people with criminal records impact a disproportionate number of people of color because they are overrepresented in the criminal justice system.

For years the Fair Housing Center has been documenting calls to our office from people who cannot find housing due to their conviction record.

Currently no federal or state fair housing protections exist for persons with a criminal background (regardless of type of crime, length of sentence, or time elapsed since conviction). Many fair housing advocates believe that using civil rights law is one way to successfully advocate for stable housing for this growing population.

We believe there are robust frameworks which demonstrate how civil rights law may provide successful arguments to assist this substantial population in both securing and keeping housing.

When we look at discriminatory practices against a protected class barred by the Fair Housing Act of 1968 (protected classes here include race, religion, sex, disability, the presence of children, national origin, and color), how do we understand these practices when combined with criminal background?

Here's an example: If a property owner or manager requires only applicants of a certain race to submit to a criminal background check OR if a property manager or owner requires all applicants to undergo a background check but only denies housing to applicants of color, this may violate the FHA.

Local community ordinances exist that prohibit housing discrimination against individuals with an arrest or conviction, such as the Fair Housing Ordinance in Dane County, Wisconsin⁴, but to date they are extremely rare. We believe

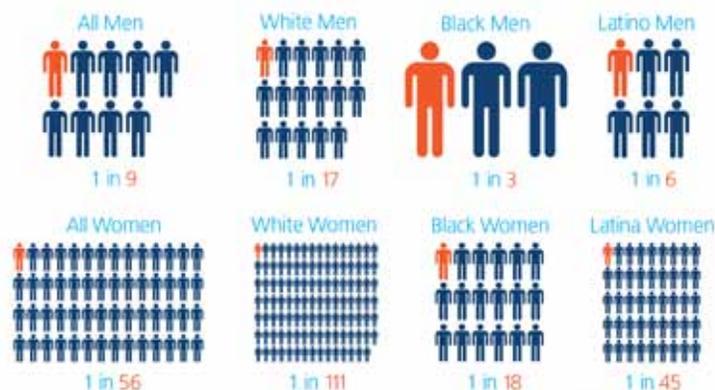
1 www.justice.gov/archive/fbci/progmenu_reentry.html

2 Rodriguez, Michelle and Maurice Emsellem. 2011. "65 Million Need Not Apply." *The National Employment Law Project*.

3 The Sentencing Project. www.sentencingproject.org/template/page.cfm?id=122

4 Section 31.03. <http://danedocs.countyofdane.com/webdocs/pdf/>

Lifetime Likelihood of Imprisonment



Source: Bonczar, T. (2003). *Prevalence of Imprisonment in the U.S. Population, 1974-2001*. Washington, D.C.: Bureau of Justice Statistics.



ordinances like these are a valuable tool to promote greater housing security for this population and should be replicated.

The FHA has established what is known as *disparate impact analysis* (DIA). DIA is a legal doctrine that can be used to rigorously enforce fair housing law. Disparate impact arguments frequently rely on statistical analysis to demonstrate that seemingly neutral housing policy may actually produce a discriminatory effect on a protected group of people as established in the FHA of 1968.

In March 2013, the Department of Housing and Urban Development (HUD) issued a Final Rule, "Implementation of the Fair Housing Act's Discriminatory Effects Standard," which officially provides pathways to liability or relief, as established by disparate impact claims. In the *Harvard Civil Rights-Civil Liberties Law Review*⁵, **Assessing HUD's Disparate Impact Rule: A Practitioner's Perspective**, authors Michael G. Allen, Jamie L. Crook, and John P. Relman suggest:

"By applying the framework in HUD's Final Rule, a successful disparate impact challenge to criminal background screening can achieve important results, including incentivizing housing providers to adopt alternative and less discriminatory screening policies, increasing access to housing for a vulnerable population, and perhaps even ferreting out subtle evidence of discriminatory intent motivating blanket bans."

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[ordinances/ord031.pdf](http://www.fairhousingcenter.org/ordinances/ord031.pdf)

5 *Harvard Civil Rights-Civil Liberties Law Review*, Vol. 49, No. 1, Winter 2014

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Thus, the disparate impact claim differs from the example in the first section in a critical way. If a property owner requires all applicants to submit to a criminal background check, and the owner subsequently fails to ever rent or lease to people of a certain race, regardless of whether or not discrimination was intended, the owner may be liable under disparate impact theory and HUD's Final Rule.

Recently, HUD Secretary Shaun Donovan and Assistant Secretary for Public and Indian Housing Sandra Henriquez wrote to the Executive Directors of the Country's Public Housing Authorities⁶ encouraging them to use less restrictive tenant selection criteria. This included considering all relevant information, such as family support or evidence of rehabilitation. This is critical, as many public housing agencies explicitly bar individuals with a criminal conviction from tenancy.

Secretary Donovan also wrote to all HUD-assisted property owners nationwide, asking them to evaluate, review, and potentially edit their tenant selection policies. He proposes these changes as part of a larger social and governmental effort to reduce recidivism, reunify families, encourage productivity, and to reduce homelessness among the ever expanding group of citizens with criminal backgrounds.

HUD's recommendations are notable for the ways housing applicants with conviction records may be protected, but they also provide a road map for replication in the private housing market.

We expect lively conversations and productive dialogue on the connection between criminal background and fair housing to not only continue, but accelerate in upcoming years.

6 www.fhcmichigan.org/emerging-issues

You can read more about this and other emerging issues on our website at fhcmichigan.org/emerging-issues.



FHC Welcomes Assistant Coordinator of Investigations

Niki Green joined the Fair Housing Center staff in September 2013. Niki has committed herself professionally to public interest and advocacy work for the past five years as an attorney for two Michigan legal aid programs. Niki has substantial experience in the landlord/tenant law arena, which led to her interest in fair housing law, after observing how often the two areas intersect. We are fortunate that Niki plans to use her Spanish speaking skills to assist FHC complainants. Niki received her B.A. in History and Sociology from Emory University and her J.D. from the University of Denver. She lives in Ann Arbor with her husband, Ed, and their toddler son, Julian.

Thank You, Norah!

Norah Rast volunteered with the FHC during her junior and senior year at Ann Arbor Pioneer High School. Norah's volunteer duties included research, programmatic support, collating, and copying (in other words, the real non-profit gamut!). Norah is now a student at Washington University in St. Louis. We wish her the best!

