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 year\(^1\), 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 Latinos\(^3\), 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, Wisconsin\(^4\), but to date they are extremely rare. We believe 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.”

1. [www.justice.gov/archive/fbo/progmenu_reentry.html](http://www.justice.gov/archive/fbo/progmenu_reentry.html)
3. [www.sentencingproject.org/template.cfm?id=122](http://www.sentencingproject.org/template.cfm?id=122)
4. Section 31.03. [http://danedocs.countyofdane.com/webdocs/pdf/section31.03.pdf](http://danedocs.countyofdane.com/webdocs/pdf/section31.03.pdf)
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!