

FACT SHEET: FAIR HOUSING, CRIMINAL BACKGROUND & ARREST RECORD



Protection under the Federal Fair Housing Act

The Federal Fair Housing Act prohibits discrimination in housing, both public and private, on the basis of race, color, religion, sex, national origin, familial status, and disability. Federal laws do not currently prohibit housing discrimination on the basis of criminal background or arrest record.

However, the U.S. Department of Housing and Urban Development (HUD) acknowledges the widespread racial and ethnic disparities in the U.S. criminal justice system and therefore criminal history-based restrictions pertaining to housing are likely to disproportionately burden African Americans, Latinos, and other people of color.

While the Act does not prohibit housing providers from appropriately considering criminal history information when making housing decisions, the use of arbitrary and overbroad criminal history-related restrictions or bans are likely to lack a legally sufficient justification and can be as discriminatory.

Protection under HUD's Criminal Background Rule

HUD's "Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions" Rule (Criminal Background Rule), published in 2016, requires all housing providers to evaluate potential tenants on a case-by-case basis.

Housing Providers

- May not have a blanket ban on prospective tenants with a criminal background.
- Must distinguish between arrests and convictions. Potential tenants cannot be denied for an arrest record.
- Will need to evaluate the nature and severity of the crime, when the crime took place, what the person has done since the conviction, and consider each applicant on a case-by-case basis.
- Must treat all applicants equally regardless of race, national origin, sex, disability, etc.
- Maintain criminal history tenant selection policies that distinguish between criminal conduct that indicates a demonstrable risk to resident safety and/or property and criminal conduct that does not.
- Prove through reliable evidence that its policy actually assists in protecting resident safety and/or property and is not simply based on generalizations or stereotypes about criminal records.



- Take into account the nature and severity of an individual's conviction; consider the amount of time that has passed since the criminal conduct occurred.
- Evaluate each tenant on a case-by-case basis.

If a potential tenant is denied housing due to a conviction, the housing provider may have to prove that the exclusion is justified. The only exception to this guidance is when the conviction was for manufacturing or distributing drugs.

How can individuals with criminal backgrounds be protected under the Fair Housing Act?

It is important to understand that the Criminal Background Rule is not a law or an amendment to the Fair Housing Act, nor does it create any additional federally-protected classes. It is a HUD rule applicable to all housing. However, it is possible that previously incarcerated persons experience with discrimination may fall under another protected class. The FHC has had some success in gaining reasonable accommodations for people with disabilities who either have a criminal background themselves, or require the assistance of someone who does.

Example: Ex-Offender Keeps Housing, Parking Space

A man with a physical disability lived in his apartment building for three years. He was, by all accounts, an excellent tenant. When a new management company took over, they required that each tenant reapply. Our complainant had a felony record from 14 years prior and for this reason the new managers told him he would have to move at the end of his lease. As a reasonable accommodation, FHC asked for a new lease to be issued, pointing out that our complainant had turned his life around. The accommodation was granted. The complex later removed his reserved parking space. We asked for a second accommodation to have his reserved parking space returned to him and the accommodation was granted.

Example: Caregivers with Conviction Records Allowed

A woman who owns a mobile home needs 24-hour-a-day care provided by her son and her boyfriend. Both had been living with her for the last six years without complaint or incident. A new manager demanded she officially put her caregivers on her lease, but denied their applications because of past felony convictions. This led to an eviction notice and the woman feared that any gap in her care could be fatal. FHC staff wrote a letter asking that they let her add her caregivers to the lease as a reasonable accommodation of her disability. The accommodation was granted.

Are private housing providers subject to the Criminal Background Rule?

Yes. Both private and public housing providers are subject to the Rule.

What should I do if I believe that I've been discriminated against?

"We have a blanket 'no felony' policy"

"If you served time in the last 20 years, we won't take you"

"We don't even look an application if you have a criminal record"

"Arrested? You can't live here"

If you've heard any of those statements (or others), call the Fair Housing Center of Southeast & Mid Michigan. We are ready to help with any problem of housing discrimination.

We are a private nonprofit organization providing investigative services (testing), advice, advocacy, conciliation, attorney referrals, and community education for Clinton, Eaton, Ingham, Jackson, Lenawee, Livingston, Monroe, and Washtenaw counties. The mission of the FHC is to end discrimination in housing and public accommodations and to promote accessible, integrated communities.

If you think you have experienced housing discrimination or have a question about fair housing, call us at [877-979-3247](tel:877-979-3247).

You can also fill out a contact form on our website (www.fhcmichigan.org) and FHC staff will follow up with you to obtain additional information concerning your allegation or complaint of discrimination.

Information provided about allegations or complaints of housing discrimination will be kept confidential.

Sources

Fair Housing Center of West Michigan

["Fact Sheet: Criminal Background Screening"](#)

U.S. Department of Housing and Urban Development (HUD)

["Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions"](#)

More information can be found at: <http://www.fhcmichigan.org/background/>