



UNITED STATES

No Second Chance

People with Criminal Records Denied Access
to Public Housing

HUMAN
RIGHTS
WATCH

**“You deserve a chance, no matter what you did . . .
It’s done and over with, it’s in the past. I’m tryin’ to do the right thing;
I deserve a chance . . . Everybody deserves a chance.”**

P.C., A 41 YEAR-OLD AFRICAN AMERICAN MOTHER DENIED HOUSING BECAUSE OF A SINGLE ARREST
FOUR YEARS PRIOR TO HER APPLICATION. SHE WAS NOT CONVICTED OF THE OFFENSE.

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Executive Summary

November 2004

No Second Chance: People with Criminal Records Denied Access to Public Housing

Decent and stable housing is essential for human survival and dignity, a principle affirmed both in U.S. policy and international human rights law. The United States provides federally subsidized housing to millions of low-income people who could not otherwise afford homes on their own. U.S. policies, however, exclude countless needy people with criminal records, condemning them to homelessness or transient living.

Exclusions based on criminal records ostensibly protect existing tenants. There is no doubt that some prior offenders may still pose a risk and be unsuitable neighbors in many of the presently-available public housing facilities. But U.S. housing policies are so arbitrary, overbroad, and unnecessarily harsh that they exclude even people who have turned their lives around and remain law-abiding, as well as others who may never have presented any risk in the first place.

Exclusions from public housing are among the harshest of a range of punitive laws that burden people with criminal records. Nevertheless, to date they have received scant attention from policymakers, elected officials, advocates for the poor, and the public at large.

Analysis of One-Strike Policies

Policies mandating criminal record exclusions, generally called “one strike” policies, were developed in the 1990s as an attempt to address drug trafficking, violent crime, and disorder in public housing, especially urban high-rise developments. In 1996, President Bill Clinton declared “the rule in public housing should be one strike and you’re out.” Congress subsequently incorporated the one-strike policy into federal housing law.

Today, federal law bans three categories of people from admission to public housing: those who have been convicted of methamphetamine production on the premises of federally funded housing, who are banned for life; those subject to lifetime registration requirements under state sex offender registration programs; and people who are currently using illegal drugs, even those with no criminal records.

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and worldwide.**

***No Second Chance*
is a national report
on public housing
admissions
policies.**

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The law is unnecessarily harsh and punitive. For example, a man convicted of a sex offense at age twenty would still be banned from a public housing for seniors forty years later, even if he never committed another offense.

Under federal law, local public housing authorities (PHAs) also have the discretion to deny admission to three additional categories of applicants: (1) those who have been evicted from public housing because of drug-related criminal activity for a period of three years following eviction; (2) those who have in the past engaged in a pattern of disruptive alcohol consumption or illegal drug use, regardless of how long ago such conduct occurred; and, (3) the catch-all category of those who have engaged in any drug-related criminal activity, any violent criminal activity, or any other criminal activity if the PHA deems them a safety risk. In practice, these discretionary categories are used to exclude a wide swath of people with criminal records without any reasonable basis to believe they actually pose a present risk to anyone.

Federal regulations advise PHAs to take into consideration in their admissions decisions the nature and remoteness of applicants' offenses, as well as mitigating factors and evidence of rehabilitation. But they do not require PHAs to do so. As a result, few PHAs provide applicants an individualized evaluation before issuing a rejection. The Department of Housing and Urban Development (HUD) does not review PHA admissions criteria or practices to determine if they are consistent with federal housing policy and goals.

Although PHA criminal record admission policies vary considerably, many reject applicants:

- ◆ with an arrest record, sometimes even for a single arrest, regardless of whether they were ever convicted.
- ◆ with convictions for minor, nonviolent offenses, including misdemeanors such as shoplifting or writing a bad check, and regardless of whether the nature of the conduct has any relationship to the likelihood of the applicant being a good tenant.
- ◆ for excessively long periods of time following an offense. For example, a single drug misdemeanor can trigger ineligibility for upwards of one year; indeed, as long as ten years, depending on the locale. In some places, a person convicted of a violent felony can be ineligible for life—regardless of how exemplary the years following his crime have been.

U.S. housing policies exclude people have turned their lives around, as well as others who may never have presented any risk in the first place.

Few public housing authorities undertake a meaningful evaluation of applicants before rejecting them.

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Moreover, most PHAs automatically deny admission to an applicant with a criminal record without even looking at mitigation or evidence of rehabilitation. Consideration of those factors typically occurs only if an applicant for housing seeks administrative review of the denial. Although those who have lawyers often win such appeals, many applicants for public housing are unable to secure representation.

Balanced, Reasonable Policies

Although advocates for harsh exclusionary policies argue they are necessary to reduce crime in public housing, the experience of many PHAs suggests otherwise.

For example, neither the New York nor the Los Angeles city housing authorities consider arrest records and both limit the types of offenses that warrant exclusion, as well as the length of time applicants with criminal records are excluded. Yet officials at both PHAs told Human Rights Watch that they believe they combat crime just as effectively with their policies as PHAs with far harsher ones. They also have acknowledged the importance of including consideration of prisoner reentry needs in developing public housing policies. “We try to have an enlightened, balanced policy, recognizing that people do have the ability to rehabilitate,” the general manager of the New York City Housing Authority told Human Rights Watch. “Understanding the role of probation, parole, and treatment, we try to balance the interests of residents and applicants.”

Additional evidence that highly restrictive criminal record policies are not responsible for reduced crime rates in public housing developments comes from the comparison of PHAs located in the same geographic area, but with radically different admissions criteria. For example, the Salt Lake City Housing Authority uses automatic exclusion policies that restrict access to housing for long periods of time and for minor offenses, while the Housing Authority of the County of Salt Lake undertakes an individualized review of each applicant. Yet officials in both PHAs believe they have achieved increased safety and reduced crime.

The Consequences of Exclusion

Denying people the only means of securing safe and affordable housing results in consequences as obvious as they are tragic. People denied public housing live on the streets, in overcrowded shelters, and in squalid transient or SRO hotels. In the best of circumstances, they are crowded into the homes of family or friends for short periods of time, or live in apartments they are not able to afford the following month. Many of them have no

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housing options other than those that, as they themselves recognize, are rife with domestic abuse, violence, crime, and harmful drug and alcohol use.

Transient living disrupts a child's education, emotional development, and sense of well-being. Lacking stable housing, children can be removed from their parents' custody, and parents returning from incarceration are often unable to regain custody of their children. Women may be forced to consider returning to an abuser to avoid homelessness or find themselves having to exchange sex for a place to stay.

People who are inadequately housed, especially those living on the streets or in homeless shelters, are at higher risk for communicable diseases such as HIV and tuberculosis. For those fighting to remain drug free, relapse is almost inevitable. And the homeless face criminal penalties for living "private lives in public places," for example, when they sleep and relieve themselves on the street.

Recidivism becomes a self-fulfilling prophecy when offenders are released from incarceration with scant survival options. As one substance abuse treatment provider in Birmingham, Alabama, explained, exclusionary policies need to be changed "not just because it's the humane thing to do, but because it's the smart, public safety thing to do."

Recommendations

The United States must recognize that all its residents—even those with criminal records—have a right to decent and affordable housing. Specifically, Human Rights Watch recommends that:

The U.S. Congress

- ◆ Repeal federal laws that impose outright bans on public housing for certain types of offenders.
- ◆ Pass federal legislation that requires PHAs to conduct an individualized evaluation of each applicant with a criminal record before making a decision on the application.
- ◆ Ratify the International Covenant on Economic, Social and Cultural Rights (ICESCR) and acknowledge the right of all residents of the United States to adequate housing that is decent, safe, and affordable.

Everyone has the right to decent and affordable housing. Revising U.S. housing policies is the "smart, public safety thing to do."

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The U.S. Department of Housing and Urban Development

- ◆ Adopt policies that require individualized consideration of each applicant with a criminal record, prior to making a decision on an application, to determine whether he or she will pose a risk to existing housing tenants. Require the following factors be included in the consideration: (1) evidence of rehabilitation, either during incarceration or in the community; (2) the effect of denial on minor children and efforts to reunify families; and (3) whether denial will render the applicant homeless.
- ◆ Require PHAs to adopt admissions policies that ensure:
 - criminal records that are more than ten years old do not prevent admission, absent extraordinary circumstances;
 - offenses upon which denials are based are relevant to being a good tenant; and
 - consideration of a criminal record is limited to convictions, absent a pattern of continuing arrests.
- ◆ Monitor denials of public housing to ensure that they are not arbitrary, that they are based on reasonable and individualized determinations of risk, and that they do not have a disproportionate and unjustifiable impact on applicants from racial and ethnic minorities.
- ◆ Require PHAs to compile and make public on an annual basis the number of applications made for public housing, the number of applicants denied because of negative criminal history information, the number of those denied who appeal, and the number of those challenging their denials who prevail following administrative hearings.
- ◆ Conduct expert and ongoing evaluations of whether policies excluding people with criminal records from public housing have an effect on crime patterns, public safety, and quality of life in public housing.
- ◆ Provide guidance and training to PHAs about how to conduct individualized evaluations of applications for housing assistance.
- ◆ Research the feasibility and design of expanded alternative housing programs for people with criminal records who cannot be accommodated in existing public housing models because of their criminal histories.

Denials should be based on individualized determinations of risk and must not have a disparate and unjustifiable impact on applicants from racial and ethnic minorities.

Expanded alternative housing is needed for people with criminal records who cannot be accommodated in existing public housing models.

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Public Housing Authorities

- ◆ Adopt policies that require individualized consideration of each applicant with a criminal record, prior to making a decision on an application, to determine whether he or she will pose a risk to existing housing tenants. Ensure that the following factors be included in the consideration: (1) evidence of rehabilitation, either during incarceration or in the community; (2) the effect of denial on minor children and efforts to reunify families; and (3) whether denial will render the applicant homeless.
- ◆ Adopt criminal record admissions screening policies that consider:
 - only criminal records that are less than ten years old, absent extraordinary circumstances;
 - only those offenses that are relevant to being a good tenant; and
 - only convictions, absent a pattern of continuing arrests.
- ◆ Provide an administrative appeal process for those deemed ineligible for public housing that ensures the full range of due process rights including: adequate notice of the reason for denial; the opportunity to appear with representation, to question witnesses and present evidence and testimony; a written and publicly-available decision setting forth reasons for the administrative decision; and a meaningful opportunity to appeal the administrative decision to a court of law.
- ◆ Advise applicants who are denied eligibility for public housing of the availability of local legal assistance to represent them should they choose to challenge their denials.
- ◆ Ensure that applicant criminal records are obtained from a reliable source.

Applicants who are denied should have access to fair hearings with the full range of due process rights.

To access the full text of *No Second Chance*, please visit Human Rights Watch's website at <http://hrw.org/reports/2004/usa1104/>



Front cover: Denied public housing because of a single criminal assault 13 years ago, fifty-seven year-old H.G. asks whether she is going to be treated as “a criminal for the rest of my life?” Currently facing the end of her transitional housing program, H.G. confronts the prospect of homelessness. Pittsburgh, Pennsylvania, January 29, 2004.

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People with Criminal Records Denied Access to Public Housing

From 1988 to 1998 the United States Congress passed a series of increasingly harsh laws to keep people with criminal records out of public housing. Federal law now imposes lifelong ineligibility for housing on certain types of offenders, and gives local public housing authorities discretion to deny assistance to others.

Americans today are denied access to public housing because of long ago and minor criminal offenses that have nothing to do with their suitability as tenants. Public housing authorities reject their applications without conducting even a pretense of an individualized evaluation.

Criminal record exclusionary policies were adopted in response to high levels of crime and violence in public housing. There is scant evidence that arbitrarily broad and automatic housing exclusions have improved public safety. There is plenty of evidence, however, that they have contributed greatly to the misery and desperation of many poor Americans.

There is a crisis in affordable housing in the United States, and the demand for public housing far exceeds the supply. *No Second Chance* shows that by requiring strict admissions policies, the federal government has tacitly adopted a method of “triage” to whittle down the number of qualified applicants.

The right to housing is a universal one. For millions of poor Americans, public housing may be the only practical way to realize that right. The alternative is living on the streets, in overcrowded shelters and squalid transient motels, or doubled up in the homes of friends and relatives.

The United States has belatedly recognized that the millions of Americans who have committed crimes and been sent to prison deserve a second chance. For that chance to be real, the United States must repeal automatic exclusions from its housing policy.

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