



Seattle Office for Civil Rights

Edward B. Murray, Mayor

Patricia Lally, Director

Date: July 10, 2017
To: Councilmember Lisa Herbold
From: Patricia Lally, 233-7822
Subject: Fair Chance Housing

Background

An estimated one in every three adults in the United States has an arrest or a conviction record¹ and nearly half of all children in the U.S. have one parent with a criminal record.² It is estimated that approximately 30% (173,714) of Seattle residents over the age of 18 have an arrest or conviction record and that 7%, or 43,428 people, have a felony record.³

Due to a rise in the use of criminal background checks during the tenant screening process, people with arrest and conviction records face major barriers to access housing. In some cases, landlords categorically exclude people with any prior arrest or conviction. One study found that 43% of Seattle landlords are inclined to reject an applicant with a criminal history.⁴ All Home has reported that one in five people who leave prison become homeless soon thereafter.⁵

*“Don't be a felon in the city and try to get an apartment.
No amount of money can get you past a felony.”*
– Resident, City of Seattle 2016 Homeless Needs Assessment

Landlords deny applicants with convictions for a variety of reasons, and often without a clear relationship to tenancy or safety of residents. One screening agency reported that theft in the second degree was one of the top reasons for denial. Convictions on this basis can include the theft of an iPhone.

Without a legitimate business reason, screening based on a criminal conviction can be a tool for racial discrimination. In 2016, HUD issued guidance on the use of arrest and conviction records in housing. In the guidance, HUD states screening policies and practices can have a discriminatory impact due to deep-rooted inequities in the criminal justice system and as such, require a legitimate nondiscriminatory interest to ensure compliance with fair housing law.

¹ U.S. Department of Justice Office of the Attorney General, “The Attorney General’s Report on Criminal History Background Checks.” (June 2006) at 51

² Center for American Progress, “Removing Barriers to Opportunity for Parents With Criminal Records and Their Children” (December 2015)

³ Prevalence estimates sent by University of Washington Sociologist Katherine Beckett

⁴ Helfgott, J.B. (1997). Exoffender needs versus community opportunity in Seattle, Washington. Federal Probation, 61, 12-24.

⁵ All Home citing National Alliance to End Homelessness, http://www.endhomelessness.org/pages/re_entry

810 Third Avenue, Suite 750, Seattle, WA 98104-1627

Tel: 206-684-4500, Fax: 206-684-0332, TYY 206-684-4503, <http://www.seattle.gov/laborstandards>

An equal opportunity – affirmative action employer.

Accommodations for people with disabilities and language interpretive services provided upon request.

Housing providers have begun to come into compliance with the guidance, but it is anticipated to be rolled back under the Trump administration.

Legislative History

For nearly a decade, community groups have called on the City to address barriers faced by renters with criminal records. In 2010, OCR convened two public forums bringing together over 300 people, two thirds of whom testified in support of legislation to address barriers in housing and employment. Council responded by unanimously passing Fair Chance Employment legislation and asking the Office of Housing and OCR to work with nonprofit housing providers on best practices for housing screening.

Efforts by City departments have been successful at getting many nonprofit providers to understand the importance of individually assessing applicants to avoid racially disparate impacts caused by blanket policies of exclusion. The Office of Housing held educational sessions for housing providers on the impacts of criminal record screening on racial equity and developed a guide on selecting a tenant screening agency.

All Home has also taken steps to address this issue. All Home implemented coordinated entry for persons experiencing homelessness in King County and worked with funders, providers, and system partners to lower and standardize eligibility criteria in all publicly funded homeless programs to reduce the barriers to housing such as criminal records. Prior to this shift, homeless housing programs across King County held more than 100 distinct criteria related to evictions and criminal records causing a disparate impact on communities of color. In lowering barriers to programs, there are now only five types of criminal convictions included in screening for homeless housing programs and they are asked about only when necessary.

While these efforts have made an impact, many affordable housing providers and landlords of market rate units continue to have policies and practices that broadly exclude people with criminal records.

HALA Recommendation

In 2015, the Housing and Affordability and Livability Agenda (HALA) committee recommended that the City address the barriers faced by renters with criminal records via legislation, education, and technical assistance. In response, the Mayor's Action Plan to Address Seattle's Affordability Crisis called for stakeholders to provide input on legislation that would address two goals: racial equity and public safety. OCR convened stakeholders for six meetings held between August 2016 and January 2017. Stakeholders represented a diverse array of interests including persons with prior convictions, legal advocacy organizations, landlord associations, nonprofit housing providers, and social service agencies specializing in working with people in re-entry (Fair Chance Housing Stakeholder list attached).

Goal 1. Racial equity

Racial equity is central to the issue of fair chance housing. People of color face compounding effects of criminal records due to racial bias in tenant selection as well as racial disparities in the criminal justice system. In 2014, 64% of OCR's fair housing tests found incidents of different treatment based on race. In some cases, African Americans were told they would have to undergo a criminal record check when similarly situated white counterparts were not told.

Racial disparities in the criminal justice system have deeply and negatively harmed communities of color. Due to an interplay of racial bias, sentencing policies and systemic inequities, people of color make up 37% of the U.S. population but 67% of the prison population. The Sentencing Project citing Bureau of Justice Statistics data, has stated, "Overall, African Americans are more likely than white Americans to be arrested; once arrested, they are more likely to be convicted; and once convicted, they are more likely to face stiff sentences. Black men are six times as likely to be incarcerated as white men and Hispanic men are more than twice as likely to be incarcerated as non-Hispanic white men."⁶

These racial disparities hold in Washington as well. In Washington State, African Americans are 3.4% of the overall population but account for nearly 18.4% of the state's prison population; Latinos are 11.2% of Washington's population but account for 13.2% of the state's prison population; and Native Americans are 1.3% of the state population but account for 4.7% of the state's prison population.

Fair Chance Housing Committee stakeholders relayed the importance of ensuring legislation meaningfully addresses the experiences of communities of color. OCR also reached out to residents living at Jubilee Women's Center (formerly Sojourner Place Transitional Housing), the Village of Hope, and members of the Black Prisoners Caucus at Clallam Bay State Penitentiary for their input on this policy. All groups emphasized the importance of centering racial equity as a part of this legislation.

Goal 2: Keeping families together and building inclusive communities

Fair access to housing helps to keep families together. Nearly half of all children in the U.S. have one parent with a criminal record.⁷ Families also face barriers in keeping or finding new housing when they have a child with a juvenile record. As a result, many families have had to separate or face homelessness. About 80% of the young men we spoke with at the Black Prisoner's Caucus at Clallam Bay State Penitentiary plan to return to Seattle once their sentences are complete. One young man expressed that he knew he would be homeless because he didn't want to impact his mother's ability to stay housed through Seattle Housing Authority or impact his girlfriend's lease with her landlord.

While there are some transitional housing options available for those with prior records, providers impose barriers when trying to place people into permanent housing. Pioneer Human Services provides clients with up to 24 months of housing and yet Hilary Young, VP of Policy at Pioneer Human Services, states, "Many people do not have anywhere to turn once that time

⁶ <http://www.sentencingproject.org/criminal-justice-facts/>

⁷ Center for American Progress, "Removing Barriers to Opportunity for Parents With Criminal Records and Their Children" (December 2015)

expires, despite having established positive rental history, and are forced into sub-standard or dangerous housing situations or back onto the streets.” Fair Chance Housing assures that parents who have served their time can reunite with their family and provide for their family, and children who have juvenile records can remain in their home, providing much needed stability.

Housing is a key ingredient for successful re-entry into the community. The Vera Institute of Justice has shown that housing also leads to reduced recidivism and that without housing a person was seven times more likely to reenter the criminal justice system.⁸ Stable housing, in conjunction with stable employment, ensures people can provide for themselves and their families.

Some stakeholders have expressed concern regarding the need to use criminal records as a public safety tool. Yet many landlords currently do not conduct criminal records checks and the safety of residents has not been impacted. Sociological research finds that the propensity to re-commit a crime is not automatic. Rather, after 4 to 7 years where no re-offense has occurred, a person with a prior conviction is no more likely to commit a crime than someone who has never had a conviction.⁹

Studies have also shown that a conviction record alone is not a predictor for tenant success. A 2009 study conducted at Downtown Emergency Service Center showed that a criminal record was not statistically predictive of a failure to maintain housing and that rather, age was the only factor that could be used as a predictor of tenant success.¹⁰

Current State

The following laws and regulations currently impact rental advertisements, screening, and decisions in relation to criminal history.

1. WA Fair Credit Reporting Act (RCW 19.182)
Landlords cannot currently receive criminal history information from screening companies of:
 - offenses older than seven years (from date of disposition, release or parole)
 - juvenile records, if applicant is 21 or older
2. First in Time provision of the Open Housing Ordinance (SMC 14.08)

⁸ “The First Month Out: Post-Incarceration Experiences in New York City”, Vera Institute of Justice, 1999.
http://cowlitzfish.net/Whats_New/files/562240fc8e0a4293598e23072a0a3fad-1030.html

⁹ Kurlychek, et al. “Scarlet Letters & Recidivism: Does An Old Criminal Record Predict Future Criminal Behavior?” (2006) and “Redemption’ in an Era of Widespread Criminal Background Checks,” *NIJ Journal*, Issue 263 (June 2009), at page 10 - preliminary study with group of first-time 1980 arrestees in New York- the findings depend on the nature of the prior offense and the age of the individual.

¹⁰ Malone, Daniel, Assessing Criminal History as a Predictor of Future Housing Success for Homeless Adults with Behavioral Health Disorders, *Psychiatric Services*, Feb 2009, Vol. 60, No.2

If a landlord screens for criminal records, they are required to provide notice of the convictions they screen for and additional criteria that will be used to conduct an individualized assessment of an applicant's criminal record, if the landlord conducts one. They must notify in writing, by posting it in the office of the person leasing the unit, or by posting it in the building that is being advertised for rent, and on any website that the landlord uses to advertise the unit.

If the owner needs more information than was stated in the notice to determine whether to approve the application, take an adverse action, or decide to conduct an individualized assessment, the owner must notify the applicant of what additional information is needed, and the specified period of time (at least 72 hours) that they have to provide the additional information.

3. HUD Guidance on the Use of Arrest and Conviction Records

Criminal records policy or practice may violate fair housing laws due to racial disparities in the criminal justice system. To ensure compliance, HUD encourages landlords to avoid blanket bans, demonstrate safety risk to resident safety and/or property using reliable evidence (review nature and severity of conviction and time elapsed since conviction occurred). Exclusions must be necessary to achieve a "substantial, legitimate, nondiscriminatory interest" of the provider. Arrest records alone or blanket bans should not be used. The guidance encourages the landlord to conduct an individualized assessment (case-by-case analysis) that considers the age of the individual, tenant history, and rehabilitation efforts.

Addressing Unintended Consequences

In 2016, the University of Michigan published a study on the unintended consequences of ban the box policies on racial equity. The study found that absent the ability to see criminal history information, employers relied on racial bias, associated blackness with criminality, and rejected applicants with a Black-sounding name. The study found that before Ban the Box was put into place white applicants received 7% more callbacks than similar black applicants. This disparity increased to 45% after Ban the Box was put into place.¹¹ The policy worked for white applicants, in that white applicants with records received call backs more than Black applicants without criminal records. Black applicants without records were more likely to not be called back at a higher rate after Ban the Box was implemented.

The City's Fair Chance Housing policy must center racial equity to ensure that there are no unintended consequences that cause greater harm. To address this, the policy proposal includes a bright line look-back period to reduce instances where racial bias may be introduced into the process. OCR is also proposing that landlords receive required anti-bias training when part of a probable cause finding or settlement and voluntarily for all others through a new Fair

¹¹ Agan, Amanda Y. and Starr, Sonja B., Ban the Box, Criminal Records, and Statistical Discrimination: A Field Experiment (June 14, 2016). U of Michigan Law & Econ Research Paper No. 16-012.

Home Program. Fair Chance Housing would also be subject to proactive enforcement through Directors Charges and our testing program.

Other Jurisdictions

Jurisdiction	Laws
Champagne and Urbana, IL	Arrest and conviction records are a protected class.
Richmond, CA	Public housing providers can't look at records older than 2 years. Private market providers must have legitimate nondiscriminatory reason to deny.
Washington D.C.	Private and public housing can't look at convictions older than 7 years. Does not apply to certain convictions including murder, manslaughter, assault, arson, sex abuse, robbery, kidnapping, and fraud.
San Francisco	Applies to publicly funded housing providers receiving funds from the City/County of San Francisco. Can only look back 7 years. Must have business reason for denial.

Fair Chance Housing Legislation

Fair Chance Housing legislation regulates the use of arrest and conviction records in rental housing in Seattle. The legislation does the following:

Advertisements

Landlords will no longer be able to use language in their advertisements that categorically exclude people with any arrest or conviction records. For example, statements such as “No felons,” “Clean record required,” or “No violent offenses,” would no longer be allowed.

Questions on rental applications and in screening

Landlords will no longer be able to ask about the following on the application, in person, or through a background check:

- Arrests that did not lead to a conviction, including pending criminal charges;
- Convictions that have been expunged, vacated or sealed;
- Juvenile records;
- Information from a sex offender registry regarding a juvenile; and
- Convictions that are older than two years

Landlords who conduct a criminal background check will need a legitimate business reason to deny, evict, or take other adverse action against an applicant or tenant based on a conviction record that is less than 2 years old or based on an adult's status on a sex offender registry. They must also notify the applicant in writing of the specific record(s) that was the basis for the denial.

A "legitimate business reason" means the landlord's policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. The determination of such interest must demonstrate, through reliable evidence, a nexus to resident safety and/or property in light of the following factors:

- the nature and severity of the conviction;
- the number and types of convictions;
- the time that has elapsed since the date of conviction;
- age of the individual at the time of conviction;
- evidence of good tenant history before or after the conviction occurred; and
- any supplemental information related to the individual's rehabilitation, good conduct, and facts or circumstances surrounding the conviction provided by the individual, if the individual chooses to do so.

Addressing erroneous records

If a consumer report is used by the landlord as part of the screening process, the landlord must provide the name and address of the consumer reporting agency and the person's rights to obtain a free copy of the consumer report in the event of a denial or other adverse action, and to dispute the accuracy of information appearing in the consumer report.

Requirement to include notice of this law on the rental application

Prohibition against retaliation

Exemptions for certain housing types and federal requirements

This legislation will not apply to shared occupancy units, buildings containing four or fewer living units in which the owner resides in one unit, accessory dwelling units or detached accessory dwelling units where the owner lives on the premise.

Legislation will not preempt state and federal admission requirements, specifically a federal law that requires federally funded housing to ban people convicted methamphetamine production and people subject to lifetime sex offender registration.