



FACT SHEET: HUD guidance on criminal backgrounds and resources for re-entry housing

WHAT IS FAIR HOUSING?

Fair housing is the right to choose housing free from unlawful discrimination. Fair housing laws protect people from discrimination in housing based on race, color, religion, sex, national origin, familial status, and **disability**. Depending on where you live in Arizona, additional local protections may apply. Discrimination is illegal in housing transactions such as rentals, sales, lending, and insurance.

Individuals with a criminal record are not a protected class under the Act.

The Act does not prohibit housing providers from considering criminal records when screening applicants or making other housing decisions.

The Act does prohibit housing providers from using criminal records:

- As a pretext for intentional discrimination; or
- In a manner that causes an unjustified discriminatory effect on a protected class.

THE THEORIES OF FAIR HOUSING

Individuals who feel they have been victims of housing discrimination can bring a lawsuit under two different theories of liability: discriminatory intent (**disparate treatment**) or under discriminatory effects (**disparate impact**).

Disparate treatment: When a housing provider has a policy or practice that, on its face and in practice, discriminates against a protected class.

Example: Policy against leasing to applicants with Afghani national origin or of Asian race.

Disparate impact: If the housing provider did not intend to discriminate against a protected class, it could still be liable if the effect of a policy or practice does in fact disproportionately and adversely affect a protected class.

Example: A seemingly neutral policy of not leasing to applicants with a prior criminal conviction could lead to disparate impact liability because of how that policy could adversely and disproportionately affect members of a protected class that generally have more arrests and convictions.

2016 HUD REGULATIONS

Housing providers can still employ criminal screening policies so long as the policy's screening mechanisms are tailored to legitimate, nondiscriminatory justifications and do not categorically ban all applicants with a criminal conviction.

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What does a housing provider need to assess? Does the policy accurately distinguish between individuals who pose an unacceptable risk and those who do not?

Policies that fail to consider the nature, severity, and recency of criminal conduct are unlikely to meet this standard.

UNJUSTIFIABLE POLICIES:

- Arrest-Based Exclusions: An arrest record is not proof of criminal conduct.
- Blanket Ban for Any/All Convictions: Fails to differentiate between prior conduct that demonstrates a threat to a housing provider's substantial, legitimate, nondiscriminatory interests and conduct that does not.

TWO STEP PROCESS:

- Assess any criminal convictions
- Conduct individualized assessment for applicants whose convictions require further review

TAKE INTO CONSIDERATION:

- Criminal History
- Rehabilitation
- Community Ties/Support
- Employment History

WHAT DOES THIS MEAN FOR HOUSING PROVIDERS?

1. Do we have a blanket ban?
2. Does our policy result in a case-by-case assessment of applicant's records?
3. Are the crimes being banned actually related to the health and well-being of our community?
4. Are we taking mitigating factors into consideration? Examples:
 - Letter from parole or probation officer.
 - Letter from caseworker, therapist, counselor.
 - Certification of various treatments/rehab programs.
 - Letter from family members who know the individual well.
 - Letter from employer, teacher, etc.
 - Certification of any trainings or education completed.
 - Proof of employment.
 - Statement of applicant.
5. Are we differentiating between people who pose an actual threat and those that do not?
6. Does your policy have a clear "look back" period that is not-overly long and allows for the crimes relevance to diminish over time?
7. Avoid assuming that someone with a criminal record poses a substantial risk to your community—assumptions are dangerous!

WHERE CAN I FIND MORE INFORMATION?

If you have additional questions about the Fair Housing Act or discriminatory harassment, or if you feel as though you've been a victim of discrimination, please visit our website at swfhc.com or contact our offices at (520) 798-1568 and 1-888-624-4611. TTY: (520) 670-0233.

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