

Emerging Practices

In Tenant Background Screening

Frequently Used Terms:

“Applicant” means any person considered for, or who requests to be considered for, tenancy within a rental dwelling unit.

“Housing provider” means a landlord, owner, lessor, sublessor, assignee, or their agent [e.g., property manager], or any other person receiving or entitled to receive rents or benefits for the use or occupancy of any rental dwelling unit.¹

“Person with conviction history” means a person with a history of justice system involvement such as a person who has been convicted of one or more crimes. It’s worth noting that many people charged in our justice system take plea deals even when factually innocent to avoid longer sentences.

Introduction:

Purpose of this Resource:

This document is to support housing providers interested in implementing practices that promote fair practices and reduce applicant denials based on conviction history with the intention to screen more applicants in, not out. This document is non-exhaustive and is based on emerging practices informed by research and expertise generated in the field. Today, the field is continuing to evolve, and research is steadily growing, to support more fair practices and policies related to tenancy of individuals with conviction and arrest history. The guidance below can be used as a starting point as you begin developing your individual tenant selection plan procedures. The adoption of this guidance is strictly voluntary, but encouraged and does not carry with it any statutory conditions or requirements.

Background Screening:

General Guidance:

- The tenant selection plan (TSP) should include a detailed description of screening criteria that explicitly states what will be considered in the background screening process, how applicants will be selected, and related fees. This will allow applicants to

determine whether they meet the selection requirements. The background screening criteria should be provided prior to collecting any application fee.²

- Providing the TSP prior to accepting an application fee will help the applicant save time and money on the application if they do not meet the housing providers selection criteria.
 - **Note:** In addition, and to help prevent applicants from potentially screening themselves out at the beginning of the application process, housing providers should present the criteria as a wholistic assessment and clarify the importance mitigating factors play in the decision-making process.³
- Do not use blanket bans for applicants with conviction or arrest history in practice or policy. An example of a blanket ban is, “no criminal background allowed”. Blanket bans are in violation of fair housing laws.⁴
- In addition to implementing a low-barrier background screening approach, develop evidence-based practices and policies when considering conviction history and mitigating factors in the selection of applicants.⁵
- Consider implementing a First in Time (FIT) process. This means applications must be processed one by one in the order they are received, with offers of tenancy made in that same order (first come, first served). Implementing a FIT process will help to reduce discrimination and bias and create a fairer selection process.⁶
- Consider eliminating background screening entirely. A defense often raised by housing providers is that the utilization of background screening promotes the safety of property and other tenants. According to HUD’s 2022 memorandum, such an assertion should be supported by evidence. Further, even if such evidence exists, a housing providers investigation should still consider whether their interest can be “served by another practice that has a less discriminatory effect.”⁷

Individualized Assessment:

- The TSP should outline a clear process for how the individualized assessment will be conducted and what supporting evidence will be considered. For example, include a set of questions that will be answered in the assessment and/or a list of possible materials that could provide context to any relevant conviction history.
- When conducting your individualized assessment, consider these additional examples for supporting evidence of rehabilitation or mitigating circumstances. This list is non-exhaustive and often includes:
 - Job readiness training
 - Supportive services that assist with the transition back to society
 - Completion of a GED or other education programs
 - Completion or current/willingness to participate in a drug or alcohol rehabilitation treatment program

- Completion or current/willingness to participate in a behavioral therapy program.
 - For example: anger management
- History of trauma related to domestic violence, human trafficking, sexual assault etc.
- Reentry report from a correctional facility
- Age/maturity level
- Contextual information related to the convictions such as age at the time of the conviction, circumstances surrounding the conviction, and other relevant information
- The effects that denial of admission may have on other members of the family who were not involved in the action or failure.⁸
 - **Note:** Currently there is no best practice in determining the number of factors that a person must meet to be considered acceptable for tenancy, however, the bright line is does the applicant pose a demonstrable risk to the personal safety and/or property of others?
- As a best practice, consider keeping documentation of all responses and communication to help protect yourself from claims of discrimination and to mitigate any liability. The more you can define your discretionary factors, the more transparent your process will be, and the more protection you should have against accusations of discrimination or preferential treatment.⁹ In addition to protecting against claims of discrimination and mitigating liability, detailed record keeping and tracking of denials can help properties self-assess any patterns or implicit biases that could exist in the decision-making process.
- As part of your individualized assessment, do not consider crimes that are no longer illegal in your state.
 - For example, marijuana-related offenses
- As a best practice, include a detailed appeals process that is clearly stated in your TSP.¹⁰

Third-Party Screening Companies:

- If you are going to use a third-party screening provider, use a reputable provider with a consistent track record and confirm the accuracy of the report. Many third-party screening providers are notorious for making unfavorable recommendations based on incomplete or inaccurate information, including information that has been sealed, expunged, or vacated, based on juvenile records, using algorithms with bias, and the utilization of information that has no substantiated relationship to housing outcomes or success. Further, confirm with third-party screening providers that they are following local laws in their background screening reports (for example: fair chance housing laws).

Lastly, screen only for activity within the timeframe you indicate in your tenant selection plan.¹¹

- As a best practice, housing providers should accept the use of portable screening reports. This allows individuals with limited means and/or conviction history to pay a one-time cost and can be used to apply to multiple units. This also allows for individuals to better control the accuracy of the information generated from a third-party screening report. This does not prevent housing providers from purchasing/securing their own background screening reports in addition to the portable report. However, the applicant should not be charged for the additional report. The option of using a portable screening report should be provided up front.¹²

Lookback Periods:

- As part of our TSP guidance, we recommend that housing providers should only screen for felony convictions that have occurred within the last three years. In addition, we recommend that lookback periods should begin at either the point of conviction or the point of release from incarceration.¹³ For example, if you're using point of conviction as a starting point, if an applicant was released from incarceration one year ago, for a conviction that took place four years ago, their conviction should not be considered in the report, as they would have met the three-year conditional lookback period.¹⁴
 - **Note:** According to research and to further support this position, people who were released from incarceration tended to reoffend soon after their release. Research also found that of the people who were rearrested within the first nine years of their release, the majority (82%) of them were rearrested within the first three years.¹⁵

Final Comments:

One of the first steps anyone needs to take after incarceration is finding secure housing. Without stable housing, it is almost impossible to secure a job, become a part of the community, create social networks, pay bills, reintegrate into society, and avoid future crime. CSH's work in supportive housing has demonstrated repeatedly that people with incarceration histories can be successful tenants when they are connected with appropriate housing and services. Further, ensuring access to housing opportunities for justice-involved populations is an investment that reduces crisis and institutional costs and increases public safety.

CSH also acknowledges that housing providers have some responsibility to maintain safe environments for their residents. Housing providers must navigate liability concerns and are sometimes required to follow federal, state, and local policies that may impact their discretion. Even so, the evidence is clear: there is no way to predict future criminality based on one's

conviction history and screening out people based on past conviction history may decrease overall public safety.

Everyone deserves a second chance and a place to live regardless of race, gender, and socio-economic status and we believe that starts with stable housing. We also believe housing providers that rent to individuals with conviction histories can help further fair housing. By working together, our communities are better off.

Disclaimer: This document is not intended to serve as legal advice. Instead, it was developed to supplement the CSH model screening template and FAQ by providing housing providers a non-exhaustive list of emerging practices to consider when developing their site-based tenant selection plans related to background screening. It's important to know that state and local laws vary by jurisdiction. If you have questions or concerns about your screening process, it's recommended you contact **your local legal provider** who can provide you with the appropriate legal advice on how your practice or policy might violate/be in conflict with local fair housing, [crime free/public nuisance laws](#), be discriminatory, or related to landlord liability.

To find your local legal provider consider using these related search terms. Name of state/city/county, including civil/human rights office/commission, housing legal provider, fair housing organization or legal provider.

Example 1: California fair housing legal provider: [Housing | CRD \(ca.gov\)](#)

Example 2: California fair housing organization list: [Fair Housing Organizations List \(ca.gov\)](#)

Resources for Further Learning:

- [Fair Chance Ordinances: An Advocate's Toolkit | NHLP](#)
- [Success in Housing: How Much Does Criminal Background Matter? - Wilder](#)
- [Opening Doors to Affordable Housing: | Vera Institute](#)
- [Tenant Screening in an Era of Mass Incarceration: A Criminal Record is No Crystal Ball | NYU Journal of Legislation and Public Policy](#)
- [Just Housing Amendment to the Human Rights Ordinance | Cook County](#)

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END NOTES

¹ [Perma | www.njoag.gov](http://www.njoag.gov)

² [Opening-Doors-to-Affordable-Housing-Report.pdf \(vera.org\) \(p.12\)](#); Second cite for above cite: [Fair Housing and Tenant Selection with Regard to Criminal Record Screening 071421.pdf \(la.gov\) \(p.2\)](#); [Opening-Doors-to-Affordable-Housing-Report.pdf \(vera.org\) \(p.21\)](#); [Perma | Chapter 35B. Fair Criminal Record Screening for Housing. | D.C. Law Library \(<- D.C. Code § 42–3541.02, <https://perma.cc/ZP33-TMN9>\)](#)

³ [WDMD-final.pdf \(povertylaw.org\). \(p.13\)](#)

⁴ [Office of the General Counsel \(hud.gov\)](#); [HUD’s Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records: Where Do We Stand? - FCAP \(fcapgroup.com\)](#)

⁵ [Assistant Secretary for Fair Housing and Equal Opportunity](#)

⁶ [State Supreme Court Rules Seattle’s “First in Time” Constitutional - Rental Housing Association of Washington \(rhawa.org\)](#) (The type of first-in-time process you develop should be based on the idea of “first come, first served” and be applied in a consistent and equitable manner.); [Portland Requires Landlords To Use First-Come-First-Served System To Choose Tenants - OPB](#)

⁷ [HUD Gives Further Guidance on Criminal Background Screening — Fair Housing Project \(fairhousingnc.org\)](#); [Assistant Secretary for Fair Housing and Equal Opportunity \(p.7\)](#)

⁸ [jha_faq_for_landlords_updated_5.4.22.pdf \(cookcountyl.gov\) \(p.3\)](#); [Assistant Secretary for Fair Housing and Equal Opportunity \(p.9-10\)](#); [Fair Housing and Tenant Selection with Regard to Criminal Record Screening 071421.pdf \(la.gov\) \(p.2-4\)](#)

⁹ [Tenant-Screening-Report.pdf \(hjcmn.org\) \(p.25\)](#)

¹⁰ [TenantSelectionPlanGuidelines.pdf \(ohiohome.org\) \(p.2\)](#)

¹¹ [Updated-FTC-Letter-with-all-Exhibits_Final.pdf \(povertylaw.org\) \(p.4, 22, 24\)](#); [Tenant-Screening-Report.pdf \(hjcmn.org\) \(p.20-21\)](#)

¹² [Updated-FTC-Letter-with-all-Exhibits_Final.pdf \(povertylaw.org\) \(p.8\)](#); [021320_NHLP_FairChance_Final.pdf \(p.28\)](#); Marin Scott, How to Avoid Hidden Rental and Application Fees as a Renter, Avail, Sept. 17, 2021

¹³ [looking-beyond-conviction-history.pdf \(vera.org\)](#)

¹⁴ [Texas-Criminal-Background-Screening-Guide-for-Rental-Housing-Providers.pdf \(austinecho.org\)](#).

¹⁵ [looking-beyond-conviction-history.pdf \(vera.org\) \(p.1\)](#); Mariel Alper, Matthew R. Durose, and Joshua Markman, 2018 Update on Prisoner Recidivism: A 9-Year Follow-up Period (2005-2014) (Washington, DC: Bureau of Justice Statistics, 2018) [Perma | www.bjs.gov](#)