

## **Model Criminal History Screening Policy - Guidelines**

The attached policy, created by The Fair Housing Center, was designed to assist housing providers in adopting more inclusive criminal history screening policies to prevent tenants from being unfairly denied access to housing.

Housing is a critical component of overall stability, and individuals reentering society following incarceration are often denied housing due to their criminal history. Additionally, people of color are more likely to be disproportionately impacted by criminal history screening policies due to racial disparities in the criminal justice system.

To overcome these barriers, in 2016 HUD issued guidance for all housing providers to ensure compliance with the Fair Housing Act. Blanket bans are prohibited, and applicant screening policies and practices should incorporate the following recommendations:

- The lookback period should not be more than a few years in most cases.
- Evaluate the nature of the offense and whether it demonstrates a risk to resident safety and/or property.
- Consider each individual on a case by case basis, recognize mitigating circumstances such as rehabilitation efforts or letters of support.
- Utilize conviction records, not arrest records, as proof of offenses committed.

### **Tips/Best Practices**

- Housing providers should apply policies uniformly for all prospective tenants. This means that the application, fees, and eligibility criteria should be the same for everyone. If a background check is part of a housing provider's typical screening process, then a background check must be performed for every applicant.
- Many housing providers use a third-party service to perform background checks. While this practice is generally permissible, housing providers must still exercise discretion in determining how they will utilize the information that is provided. For example, if a report generated by a background check includes information about offenses that fall outside of the lookback period, the housing provider does not have to consider them. Only offenses that are applicable to the screening policy should be evaluated by the housing provider, even if additional information is included in the report.
- Applicants should have the opportunity to dispute the information provided in a background check. Housing providers should develop an appeal process to give the applicant an opportunity to resolve any inaccuracies and produce documentation to verify their record.
- Applicants with relevant offenses on their record should have the opportunity to provide documentation to demonstrate their rehabilitation efforts. This could include the completion of programs or other information to support their ability to be a good tenant.
- Determining an applicant's eligibility should be based on whether a tenant will pose a threat to the health and safety of the property or other tenants. It should not be based on unfounded fears or stigmas about people returning from incarceration. Negative feedback from other tenants or neighbors should not be used as a legitimate reason to deny someone housing.
- Housing providers should keep tenants' criminal records confidential and should not disclose information to anyone else, including other tenants or neighbors living nearby.

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## Model Criminal History Policy – Template for Housing Providers

**(Insert Housing Provider/Landlord/Owner Name)** is committed to complying with the Fair Housing Act and taking efforts to expand access to housing, including reducing barriers that are often faced by individuals returning from incarceration. This criminal history screening policy is designed to maintain a safe and healthy living environment for tenants while also ensuring people are not unfairly denied the right to housing.

All applicants for tenancy will complete an application, and the information provided will be used to determine the applicant's eligibility. A criminal background check will be completed for all applicants in addition to other criteria including: **(insert information about the information you use to determine eligibility, which may include proof of income, credit history, and/or rental history).**

### I. Criminal Background Check

If the applicant meets all other eligibility criteria and the applicant would be otherwise approved, a criminal background check will be conducted. **[If applicable: the screening will be conducted by (insert name of third-party reporting agency or database).]**

**Only the information that is relevant to this policy will be considered, and any offenses that fall outside of this policy will not be used to determine applicant eligibility.**

The following offenses **will be** applicable for consideration, but do not mean the applicant will be automatically denied:

- Convictions
- Felonies, if the conviction date occurred within the last three years or the date of release from incarceration occurred within the last year
- Misdemeanors, if the conviction date or date of release from incarceration occurred within the last year
- Convictions that require an applicant to register as a lifetime sex offender
- Convictions related to the production of methamphetamine

The following offenses **will not be** applicable for consideration:

- Arrests and charges without conviction
- Felonies, if the conviction date occurred more than three years ago or the date of release from incarceration occurred more than one year ago
- Misdemeanors, if the conviction date or date of release from incarceration occurred more than one year ago

## **II. Review**

### **A. Case by case review of conviction(s) for risk to health and safety**

Convictions that fall within the applicable criteria defined above will trigger a further review. (Insert Housing Provider/Landlord/Owner Name) will evaluate each applicant on a case by case basis to determine whether the applicant's criminal background demonstrates a risk to the health and safety of the property or other tenants. Based on this evaluation, the housing provider will determine whether it should approve or deny the application for tenancy.

### **B. Opportunity for applicant to provide additional information**

In the event that (Insert Housing Provider/Landlord/Owner Name) intends to deny the application based on criminal history, the housing provider will inform the applicant in writing and provide a copy of the criminal record used to determine eligibility.

The applicant will have two weeks to request an individualized review and provide supporting documentation including the following:

- Information to dispute the accuracy of the criminal background report. The applicant may provide clarifying information or produce records to verify their background.
- Information to demonstrate the applicant's rehabilitation efforts, which may include comments from a parole/probation officer, case worker, or therapist; proof of employment; certificate of completion of treatment, training, or other relevant program; or letters of support from community members or organizations.

If the applicant submits any of the above additional information, the housing provider will take it into consideration and re-evaluate whether the applicant demonstrates a risk to the health and safety of the property or other tenants.

Once a decision has been made, the housing provider will provide notice in writing to the applicant informing them whether they have been approved or denied for tenancy. Applicants who are approved will be offered housing according to the housing provider's standard leasing practices.