

FAIR HOUSING, CRIMINAL BACKGROUND, & ARREST RECORD

Protection under the Federal Fair Housing Act

The Federal Fair Housing Act prohibits housing discrimination, both public and private, based on race, color, religion, sex, national origin, familial status, and disability. Although criminal background is not a protected class under federal law, some overly restrictive tenant selection policies may violate the Fair Housing Act.

Protection under HUD's Criminal Background Rule

The U.S. Department of Housing and Urban Development's (HUD) "Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions" Rule (Criminal Background Rule) requires all housing providers to evaluate potential tenants with a criminal background on a case-by-case basis, taking into consideration:

- the nature and severity of an individual's conviction,
- how much time has passed since the criminal conduct occurred, and
- what the person has done since the conviction.

In addition, housing providers must:

- utilize tenant selection policies that distinguish between criminal conduct that indicates a demonstrable risk to resident safety and property and criminal conduct that does not,
- prove through reliable evidence that its policies actually assist in protecting resident safety and property and are not simply based on generalizations or stereotypes about criminal records, and
- treat all applicants equally regardless of race, color, religion, national origin, disability, sex, familial status, age, marital status, sexual orientation, or gender identity/expression.

Housing providers cannot:

- impose blanket bans on applicants or tenants with a criminal background
- deny an applicant solely for an arrest record

If a potential tenant is denied housing due to a conviction, the housing provider may have to prove that the exclusion is justified.

How can individuals with criminal backgrounds be protected under the Fair Housing Act?

It is essential to understand that the Criminal Background Rule is not a law or an amendment to the Fair Housing Act, nor does it create any additional federally protected classes. It is a HUD rule applicable to all housing. However, previously incarcerated individuals may experience discrimination under another FHA-protected class. Overly restrictive criminal background

policies have been proven to have a disparate impact based on race, national origin, and disability.

The FHC has had success in overturning blanket “no felony” policies, as well as gaining reasonable accommodations for people with disabilities who either have a criminal background themselves or require the assistance of someone who does.

Example: Blanket Ban on Criminal Background Reversed

Damarkus Jefferies contacted the FHC to report being denied an apartment at Huron Heights/Huron Ridge Apartments in Ypsilanti Township (a Van Rooy property). Testing supported the allegation that Mr. Jefferies, a Black man, was denied because he had a felony on his record. The apartment complex had implemented a blanket "no felony" policy, a clear violation of HUD guidelines issued in 2016 that prohibit housing providers from engaging in such discriminatory practices. The case with settled in Federal Court for an undisclosed amount, and Van Rooy changed its policy.

Example: Caregivers with Conviction Records Allowed

A woman with a disability needed 24-hour-a-day care, which her son and boyfriend provided. Both had lived with her for six years without complaint or incident. When a new manager demanded that she officially put her caregivers on her lease, she did so, and their applications were denied because of past felony convictions. The household was then served with an eviction notice. The woman feared any gap in her care could be fatal, so she contacted the Fair Housing Center. FHC staff wrote a letter asking that they let her add her caregivers to the lease as a reasonable accommodation for her disability. The accommodation was granted.

Are private housing providers subject to the Criminal Background Rule?

Yes, both private and public housing providers are subject to the Rule.

Are there any exceptions to the guidance?

Yes. HUD requires private and public landlords to ban anyone with a methamphetamine production conviction. Other HUD regulations outline the limited instances where denial of admission or termination of assistance is required in public housing, Housing Choice Voucher, and Section 8 multifamily programs [see Sources at the end of this document].

What should I do if I suspect my fair housing rights have been violated?

Please call us toll-free at **1-877-979-3247** to discuss the situation. You can also fill out a contact form on our website (www.fhcmichigan.org). FHC staff will follow up with you to obtain additional information. We will keep the information you provide confidential. We will not report undocumented immigrants to the authorities.

The Fair Housing Center is a nonprofit organization that provides investigative services (testing), advice, advocacy, conciliation, attorney referrals, and community education for Clinton, Eaton, Hillsdale, Ingham, Jackson, Lenawee, Livingston, Monroe, Shiawassee, and Washtenaw counties. The FHC's mission is to end discrimination in housing and public accommodations and promote accessible, integrated communities.

Sources

U.S. Department of Housing and Urban Development (HUD)

[HUD Memo to Public Housing Authorities \(PHAs\) \(2015\) \(PDF\)](#)

[HUD Memo to Providers of Housing and Real Estate-Related Transactions \(2016\) \(PDF\)](#)

[HUD Memo to all HUD Funded Housing Providers \(2022\) \(PDF\)](#)

* Federal Regulations

[24 CFR Part 5, subpart I; Part 960, subpart B; Part 966, subpart A; Part 982, subpart L](#)