



# FAIR HOUSING

## FOR PEOPLE WITH A CRIMINAL RECORD

### A DIGITAL TOOLKIT



**Fair Housing Center**  
for Rights & Research

## **ABOUT THIS TOOLKIT**

This toolkit was created to provide fair housing guidance for formerly incarcerated individuals as well as family members and professionals advocating for those impacted by the criminal legal system. Criminal background checks are often used as a screening criteria for rental housing to determine whether an applicant is qualified. For those with a criminal record, these screenings have become a barrier to obtaining housing. Many formerly incarcerated individuals face continued penalties post-incarceration by being excluded from housing based upon their criminal records. This toolkit is meant to provide information on fair housing rights and resources that can assist in navigating barriers to finding housing.

## **ABOUT THE FAIR HOUSING CENTER**

The Fair Housing Center for Rights & Research is a not-for-profit fair housing agency that promotes equal housing opportunities and positive race relations in Northeast Ohio. Our mission is to protect and expand fair housing rights, eliminate housing discrimination, and promote integrated communities. We advance our mission through advocacy, enforcement, education and research.

This publication is intended to convey information. Nothing in this publication should be relied on as legal advice, nor should this publication be regarded as creating an attorney-client relationship.

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# WHAT IS FAIR HOUSING?

Everyone living in the United States is protected by fair housing laws. A person cannot be discriminated against in housing based on their membership in one or more “protected classes.” A protected class is a group of people protected by laws from discrimination based on a personal characteristic.

## **Federal Fair Housing Laws prohibit discrimination in housing related transactions based on:**

- **Race**
- **Color**
- **National Origin**
- **Religion**
- **Sex** (including sexual orientation and gender identity)
- **Family Status**
- **Disability**

In addition to the federally protected classes, Ohio fair housing laws protect people based on: Ancestry and Military Status. Many municipalities may provide some additional protections under their fair housing laws. See our [State of Fair Housing Report](#) to find a listing of local fair housing laws or contact your local government offices to learn more about additional classes protected in your city.

## **What is a housing related transaction?**

- Renting
- Buying
- Selling
- Applying for a loan
- Appraisal services
- Homeowner’s insurance

# CRIMINAL RECORD SCREENING AND FAIR HOUSING

**Many formerly incarcerated individuals encounter significant barriers to securing housing because of their criminal record.**

Federal fair housing law does not explicitly prohibit criminal background screening. However, the U.S. Department of Housing and Urban Development (HUD) released [guidance](#) and a [memo](#) about how the Fair Housing Act applies to housing policies with regard to criminal background checks. HUD recognizes the racial and ethnic disparities in the criminal legal system, including disproportionate and unequal rates of arrests and convictions, and harsher sentencing of Black and Latinx individuals in particular. The result of this disparity is a disproportionate harm to members of these protected classes.

HUD's 2022 Memo regarding its 2016 Guidance on this topic recommends private housing providers not use criminal history to screen tenants for housing. Criminal history is not a good predictor of housing success.

Most housing providers are not required by law to exclude persons with criminal histories as tenants and can rely instead on other screening criteria that more closely relate to whether an applicant or resident would be a good tenant, such as: ability to pay rent, prior rental history, and personal references.

If conducting a criminal record screening, HUD has issued guidance on applying Fair Housing Act standards to the use of criminal records screening in housing related transactions.

**This guidance prohibits landlords from:**

- Denying housing based on arrest records.
- Placing **blanket bans** on renting to anyone with a criminal history. Blanket bans are bans that apply to or affect all or the majority of a given class of people.
- Conducting background checks inconsistently, performing them on some and not others based on stereotypes or fear.

## **Further, a landlord must:**

- Consider individuals on a case-by-case basis and evaluate the nature and severity of the crime, and consider the length of time that has passed since that crime was committed.
- Make a determination based on facts and evidence, and not a perceived threat.

A person can be denied based on their criminal record, legally, if their recent criminal record makes them dangerous and a risk to other tenants or neighbors. The denial must be based on reliable evidence and not be hypothetical or speculative. If challenged as a fair housing violation, a housing provider must be able to:

- Provide evidence proving that the housing provider has substantial, legitimate, nondiscriminatory interest supporting the housing denial.
- Show that the housing policy accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety/property and criminal conduct that does not.

Under federal regulations, Public Housing Authorities must reject an applicant if the person has a lifetime registration requirement relating to their conviction for a sexually-oriented offense in any state and applicants convicted of manufacturing methamphetamine on federally-assisted property.

## **What does criminal record discrimination in housing look like?**

### **Examples:**

- A housing provider will not rent to a tenant because they served time in prison for drug possession 25 years ago, but have not been in trouble with the law since.
- A housing provider automatically denies any applications where the potential renter has checked the box on the rental application inquiring if they have ever been convicted of a felony.
- A housing provider uses the person's criminal record to deny housing as a means to discriminate on another basis, such as the person's disability, family status, or sexual orientation.
- An individual has a criminal record due to a past drug or alcohol addiction, but has since successfully completed a rehabilitation program.

*\*Being in recovery from alcohol and/or drug addiction is considered a disability under the Fair Housing Amendments Act of 1988 which prohibits discrimination based on disability, and includes additional protections such as the right to reasonable accommodations and reasonable modifications.*



# RECENT CRIMINAL BACKGROUND FAIR HOUSING LAW CASES

- The Fortune Society, a non-profit organization that provides temporary and permanent housing to hundreds of formerly incarcerated individuals each year, filed suit in the U.S. District Court for the Eastern District of New York in 2014. In it, they alleged that Sandcastle Towers Housing Development refused to rent apartments to them for their clients in 2013 and 2014 because of their policy of prohibiting anyone with a criminal record from living there. Fortune alleged that the policy unlawfully discriminates because it disproportionately bars African Americans and Latinos from housing without considering each potential tenant's individual history and circumstances. [The case](#) was then settled in October 2019 with Sandcastle's owners agreeing to pay \$1,187,500. It is one of the largest settlements in a case challenging a ban on renting to people with criminal records.
- At Sailboat Bay, testers sent out to investigate by the Louisiana Fair Housing Action Center made multiple inquiries between June 2015 and March 2017 about the admissions policy. The leasing agent at the property repeatedly discouraged testers with arrests or convictions from applying, informing them that "anything on a criminal background check would automatically disqualify" and that "if you've been arrested, you're going to be denied." To resolve the HUD complaint, Sailboat Bay has agreed to pay \$35,000 and to adhere to a new admissions policy drafted by HUD and LaFHAC. The new policy is designed to ensure that arrests, charges, expunged or vacated convictions, misdemeanor convictions, and any felony convictions that took place more than five years ago, will not be considered since the HUD guidance states they are not a "reliable basis upon which to assess the potential risk to resident safety or property posed by a particular individual."

## **RECENT CRIMINAL BACKGROUND FAIR HOUSING LAW CASES (CONTINUED)**

- In a [pending lawsuit](#) in Chicago, a former tenant is suing the owner of an apartment complex, alleging it bans people who have faced felony charges even if they were never convicted — a practice his lawyers say amounts to racial discrimination. Robert Johnson, who joined in the federal lawsuit brought by Wheaton-based HOPE Fair Housing Center, says he lived at Villages on Maple without incident for about 19 months when, in March, he sought to sign a lease on a smaller apartment. According to the complaint, the property manager ran a new background check and discovered that Johnson, who is Black, had been arrested for possession of a licensed gun in 2015, when he was a security guard.
- In March of 2019 a [landmark decision was made](#) in case CFHC v. Corelogic MTD. Connecticut Fair Housing Center along with the National Housing Law Project alleged CrimSafe (CoreLogic's tenant screening tool) discriminated on the basis of race, national origin, and disability in violation of the Fair Housing Act, after a disabled Latino man with no criminal convictions was disqualified from moving in with his mother. The court held that because companies like CoreLogic functionally make rental admission decisions for landlords that use their services, they must make those decisions in accordance with fair housing requirements. As automated decisions by third-party screening companies are rapidly becoming the norm, this ruling has significant implications for landlords, renters and the entire screening industry.
- A [lawsuit filed](#) on behalf of Housing Opportunities Made Equal of Virginia, Inc. (HOME), explains how the blanket criminal record screening policy used at Sterling Glen Apartments was intended to keep African Americans from living there and disproportionately harmed people of color. Notably, Sterling Glen's policy allowed no exceptions based on how long ago the criminal conduct occurred, whether the crime bore any relationship to what sort of tenant the resident might be, whether there was evidence of rehabilitation, or whether the applicant had been a good tenant elsewhere. In 2019, a settlement was reached in which Sterling Glen agreed to revamp its policy on criminal record screening.

# ADDITIONAL PROTECTIONS FOR PEOPLE WITH DISABILITIES

The Fair Housing Act is designed to ensure that everyone is treated equally whether looking for housing or while living in housing. People with disabilities are afforded additional protections to ensure equal enjoyment of their home. Housing providers are required to grant reasonable accommodation and reasonable modification requests for tenants with disabilities.

A **reasonable accommodation** is a change in the policies and procedures of a residential property owner or manager.

A **reasonable modification** is a physical change to the interior of a tenant's own unit or to the common use areas (i.e., lobby, clubhouse, laundry facilities).

If your prior convictions resulted from or are related to a disability (mental or physical illness, past alcohol abuse, or past drug addiction) and you have a treatment plan, or are now in recovery, **contact The Fair Housing Center at (216) 361-9240**. We may be able to work with you to request a reasonable accommodation to have your application evaluated without considering the related criminal convictions. If you are located outside of our service area, we will work to locate local resources to assist you.



# DOMESTIC VIOLENCE AND CRIMINAL RECORDS

Domestic violence occurs when one person intentionally causes physical or psychological harm to another person in an intimate relationship, including sexual assault, physical abuse, and psychological/emotional abuse. It is a crime that occurs in both heterosexual and same-sex relationships, and is used to establish and maintain power and control over another person. An estimated 1.3 million women are victims of physical assault by a partner each year. While approximately fifteen percent of domestic violence victims are men, domestic violence is a crime that disproportionately affects women and mothers with children.

Survivors of domestic violence may face eviction due to the actions of their abuser. Landlords may evict them for violence in the household, destruction of property, or calls to 911 as a result of a domestic disturbance or because some local nuisance ordinances require landlords to address circumstances resulting in excessive police calls.

**Violence Against Women Act (VAWA):** This law includes specific protections for victims of domestic violence, dating violence, or stalking in federally assisted housing by:

- Prohibiting public housing authorities (PHAs) from denying admission.
- Prohibiting evictions in public housing, voucher, and Section 8 project-based programs.
- Prohibiting the termination of assistance, tenancy, or occupancy rights.
- Creating emergency housing transfer options.
- Giving tribal courts recourse against non-Native offenders.
- Protecting lesbian, gay, bisexual, and transgender victims of domestic violence.
- Adding protections for immigrants and residents of Rural Development and Low-Income Housing Tax Credit (LIHTC) properties.

## **Examples of Prohibited Actions:**

- A public housing authority evicts a woman from her housing because the police were called when her ex-boyfriend came to the house and tried to break down the unit door to enter.
- A woman loses her voucher because of an eviction, due to the housing authority's policy of terminating families from the voucher program for criminal activity, when police were called after her partner attacked her.

## DOMESTIC VIOLENCE IN PRIVATE MARKET HOUSING

At the time of the publication of this toolkit, Ohio does not have a law similar to VAWA for victims of domestic violence in private market housing. However, courts have held that victims of domestic violence can be protected under the fair housing laws when actions taken against them result from gender stereotypes or rules or terms of housing have a disparate impact on victims of domestic violence.

In 2019, the City of Brooklyn, Ohio [enacted a local ordinance](#), which provides protection for victims of domestic violence in the city's private rental market. The Fair Housing Center commends the City for taking action to protect victims of domestic violence from housing discrimination.

## CRIMINAL ACTIVITY NUISANCE ORDINANCES

Criminal Activity Nuisance Ordinances (CANOs) are municipal laws that penalize property owners for occurrences of crime and other “nuisance behaviors” on or near their property. Such laws list specific behaviors that are classified as a nuisance. Often, CANOs define a time frame wherein if a specified number of “nuisance” activities occur, the jurisdiction will require the property owner to “abate” the nuisance or face a penalty. The most common penalty is eviction, which may violate fair housing laws. See more about Criminal Activity Nuisance Ordinances [here](#). If you receive notice that you are being evicted for violating a Criminal Activity Nuisance Ordinance, or your housing provider receives notice to abate the nuisance, [contact](#) The Fair Housing Center for assistance.

# FREQUENTLY ASKED QUESTIONS

## **What if I have been denied housing because of my criminal background?**

Before a housing provider makes an adverse decision based on criminal records, they should provide the applicant or tenant with a copy of the criminal record, indicate which specific part of the record may form the basis of an adverse decision, and give the applicant or tenant the opportunity to correct inaccurate information or explain extenuating circumstances related to that record.

- Document every interaction you have with the housing provider. Include information about the property, addresses, dates, times, names of the people you spoke with, and nature of the interaction.
- Save any applications, brochures, emails, texts, and any other documents related to the interaction.
- Ask the housing provider for information on how you can obtain a copy of the background check they conducted. You are legally entitled to it by the Fair Credit Reporting Act.
- You may also choose to appeal the housing denial. Below, you will find more information on this.

# FREQUENTLY ASKED QUESTIONS

## How do I file an appeal against a housing provider's decision to deny me based on my criminal record?

The Fair Housing Center has developed a guide to assist you in appealing the denial of a housing application based on criminal screening information. The following three pages of this toolkit provide more detailed information. If you would like to download these pages separately, please click the buttons below.

**Instructions on Appealing a Housing Denial**

**Letter to Appeal a Housing Denial  
Based on Criminal History**

## Can I have my criminal record sealed or expunged?

You may be eligible for record sealing. If you are interested in sealing your criminal record, contact one of the following local resources to learn more:

- [The Legal Aid Society of Cleveland](#) (1.888.817.3777)
- [Cuyahoga County Office of Reentry](#)
- [Cuyahoga County Office of the Public Defender](#)
- [Second Chance Reentry Clinic](#)
- [LegalWorks](#)

Not an Ohio resident? [Click here](#) to find legal help in your area.

## **How to Appeal the Denial of a Housing Application Based on Criminal Screening Information**

This guide is intended for use with [the sample letter](#) to request an in-person appeal meeting when a housing provider denies your application for housing based upon the results of criminal background screening. This guide and sample letter rely upon HUD's Guidance on the Use of Criminal Records to help applicants appeal denials for housing and request an individualized assessment of their suitability for tenancy.

The sample letter requests an in-person meeting to appeal a housing denial. In preparation, collect letters of support from individuals who can speak to your character, changes you have made in your life, and why you would make a good tenant, if approved. It may also be helpful to bring an advocate (i.e. attorney, social worker, faith leader, or family member) to the in-person appeal meeting to present a strong appeal and demonstrate that you have community support.

*The U.S. Department of Housing and Urban Development (HUD) released guidance in 2016 on the ["Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions"](#). HUD's Guidance indicates that commonly-used criminal background screening policies violate the Fair Housing Act because they disproportionately impact Black and Latinx applicants and because less discriminatory alternatives exist.*

**Get the denial in writing.** If you did not receive a written denial, request a letter stating the reason your application was denied. Save all emails, voice mails, and written communication you receive from the housing provider regarding your application, your application denial, and your request for appeal.

**Timing matters.** If the housing you applied for receives federal assistance, such as public housing or subsidized housing, the denial letter will specify a deadline to appeal. It is critical that your request for an in-person appeal meeting be timely submitted and received. Private housing providers may or may not specify a deadline to appeal, but appealing promptly may be important while the property is still available.

**Keep a record** The [written request for an in-person appeal](#) may be submitted by email, mail, fax, or in person. It is important to have documentation that the request was sent and received.

- **For in-person delivery**, bring an unrelated witness or ideally obtain a copy stamped received by the office.
- **For emails**, send with delivery confirmation or read receipts requested and call the office to confirm receipt. Applicants may also request a reply in the message to confirm receipt.
- **For faxes**, save the fax confirmation page and follow up with a call to the office to confirm receipt.
- **Mailed letters** should be sent by certified mail or with delivery confirmation from the post office which will show when, where and whether the letter was delivered.

**Focus your appeal on the point(s) of concern.** Knowing the specific conviction(s) for which your application was denied and being prepared to address it will help strengthen your appeal. If the housing provider used a third party or a credit reporting agency to conduct your criminal screening, the Fair Credit Reporting Act entitles you to request a copy of the report they received.

**If your appeal is denied.** Contact the Fair Housing Center at 216-361-9240 for information on your rights and options.

**Note:** If your prior convictions resulted from or are related to a disability (*mental or physical illness, past alcohol abuse, or past drug addiction*) and you have a treatment plan, or are now in recovery contact the Fair Housing Center at 216-361-9240 as we may be able to work with you to request a reasonable accommodation to have your application evaluated without considering the related criminal convictions.

Date: \_\_\_\_\_

To: (Housing Provider, Property Name, Address)

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**Re: Requesting an in-person appeal meeting for your denial of my housing application based on criminal screening information**

Dear \_\_\_\_\_,  
(Name of Property Manager/Landlord)

I \_\_\_\_\_ am requesting an in-person meeting to appeal  
(Your Name)  
your denial of my application for housing within \_\_\_\_\_.  
(Name or Address of Property)

It appears that my application was denied due to the results of a criminal background screening. In advance, please provide me with a copy of: 1) the tenant selection plan (TSP), admissions & continued occupancy policy (ACOP), administrative plan, or, in the case of private housing, your eligibility requirements; 2) a copy of any documentation used as a basis for your denial; and 3) a copy of my application. If a third party or credit reporting agency provided the criminal screening of my application, please provide a copy of the report you received. Please also provide me with all information I am entitled to receive pursuant to the Fair Credit Reporting Act so that I may obtain such screening information. This information may be sent to me at the mailing address and/or email address provided below my signature. At the appeal meeting, I am prepared to provide: (Check all that apply.)

- |   |   |
|---|---|
| <input type="checkbox"/> Character reference(s)     | <input type="checkbox"/> Court document(s) or related records |
| <input type="checkbox"/> Former rental reference(s) | <input type="checkbox"/> Evidence of rehabilitation effort(s) |
| <input type="checkbox"/> Employer reference(s)      | <input type="checkbox"/> Other _____                          |

The Fair Housing Act prohibits housing discrimination and housing practices with unjustified discriminatory effects based on race, color, religion, national origin, sex, familial status, or disability. On April 4, 2016, the U.S. Department of Housing and Urban Development (HUD) Office of General Counsel issued guidance on the [“Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions”](#). HUD’s Guidance notes that extensive racial and ethnic disparities exist within the U.S. criminal justice system; therefore, housing restrictions based on criminal history are likely to disproportionately impact applicants of color, particularly African American or Hispanic applicants and may violate the Fair Housing Act. HUD’s Guidance indicates



housing providers must give an applicant an individualized assessment, a less discriminatory method of tenant screening. Section III of the 2016 HUD guidance states, “a housing provider violates the Fair Housing Act when the provider’s policy or practice has an unjustified discriminatory effect, even when the provider had no intent to discriminate”.

HUD’s 2016 guidance further outlines:

- Housing providers must **demonstrate that their policy or practice(s) is justified and serves to achieve a substantial, legitimate, nondiscriminatory interest**. That interest may not be hypothetical or speculative and must be proven through reliable evidence. Bald assertions based on generalizations or stereotypes will not be accepted.
- Housing providers may violate fair housing laws if they exclude applicants based upon prior arrests not resulting in conviction.
- Housing providers **cannot impose a “blanket ban”** that denies housing to applicants convicted for criminal activity without considering mitigating information such as:
  - The facts or circumstances surrounding the criminal conduct
  - The age of the individual at the time of conviction
  - How much time has passed since the criminal activity occurred
  - Evidence of maintained good tenant history (prior to or following conviction)
  - Evidence of rehabilitation efforts
- Housing providers are prohibited from intentional discrimination. Intentional discrimination results when housing providers treat applicants with similar criminal histories unequally due to their race, national origin, or other protected characteristic.

Your written response to this request for a meeting to appeal your denial of my housing application is appreciated within **ten (10)** days of the date of the letter. If I do not hear back from you, I will assume that you have denied this request. Thank you for your time and consideration in this matter.

Sincerely,

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Email Address: \_\_\_\_\_

(Only provide your email address if you are able to check it daily.)

# FREQUENTLY ASKED QUESTIONS

## What if I have a fair housing complaint?

The Fair Housing Center offers free assistance to victims in the administrative complaint process. Our advocates are available to assist victims of housing discrimination in a variety of ways, which may include providing education on their rights, investigating a complaint, engaging with a housing provider on a tenant's behalf, or supporting victims in exercising their fair housing rights. Folks outside of the Greater Cleveland area may find their local fair housing center online at: <https://nationalfairhousing.org/find-help>

You have up to one year to file a complaint with HUD from the date the alleged discrimination took place. However, it is best to file the complaint as soon as possible. [Click here to file a fair housing complaint with HUD's Office of Fair Housing and Equal Opportunity.](#)

For Ohio residents, [filing a complaint directly with the Ohio Civil Rights Commission](#) is also an option, as most, but not all, cases filed with HUD are referred for investigation to the OCRC. However, you should not file with both HUD and the OCRC because cases filed with the OCRC are reported to and considered "dual filed" with HUD.

You may also contact The Fair Housing Center for assistance by calling (216) 361-9240 and selecting Option 2 to speak with an advocate, or by emailing our advocacy team at [advocates@thehousingcenter.org](mailto:advocates@thehousingcenter.org).

# ADDITIONAL NATIONAL RESOURCES

## **National Fair Housing Alliance (NFHA)**

<https://nationalfairhousing.org>

## **National Housing Law Project (NHLP)**

<https://nhlp.org/initiatives/housing-opportunities-for-people-reentering>

## **Reentry and Housing Coalition**

<https://www.reentryandhousing.org/private-housing>

## **The Vera Institute**

<https://www.vera.org>

## **Prison Policy Initiative**

<https://www.prisonpolicy.org>

# ADDITIONAL LOCAL RESOURCES

## Legal Assistance and Advocacy:

### **The Legal Aid Society of Cleveland**

(888) 817-377

<https://www.lasclev.org>

### **ACLU of Ohio**

(614) 586-1958

<https://www.acluohio.org>

### **Cleveland Metropolitan Bar Association**

(216) 696-3525

<https://www.clemetrobar.org>

### **Lutheran Metropolitan Ministry**

(216) 696-2715

<https://www.lutheranmetro.org>

## ID/Birth Certificate Vouchers and Social Security Card Assistance:

### **North Star Neighborhood Reentry Resource Center**

(216) 881-5440

<https://northstarreentry.org>

### **Malachi Center**

(216) 771-3036

<https://www.malachicenter.org>

### **St. Herman House - FOCUS Cleveland**

(216) 961-3806

<https://sainthermans.org>

## Transportation Assistance:

### **North Star Neighborhood Reentry Resource Center**

(216) 881-5440

<https://northstarreentry.org>

### **West Side Catholic Center**

(216) 631-4741

<https://www.wsccenter.org>

## Mental Health Assistance:

### **Signature Health**

(440) 578-8200

<https://www.signaturehealthinc.org>

### **Care Alliance Health Center**

(216) 535-9100

<https://www.carealliance.org>

Download the [2022 Cuyahoga County Street Card](#) for more local resources.