

# LIFTING BARRIERS TO HOUSING FOR INDIVIDUALS WITH CRIMINAL RECORDS

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**BAY AREA LEGAL AID**

WORKING TOGETHER FOR JUSTICE

# OBJECTIVES

- Increase knowledge of barriers to housing such as criminal history, poor credit, and disability.
- Become familiar with rights and advocacy strategies, such as reasonable accommodations, VAWA and other Fair Housing ideas
- Identify when a household should seek legal assistance
- Imagine a dynamic system of care and the role that you/your organization plays!



# WHY REENTRY?

## DECADES OF MASS INCARCERATION ...

- As of July 1, 2015, more than 70 million people have records
- America now houses roughly the same number people with criminal records as it does four-year college graduates.
- Nearly half of black males are arrested by the age 23.
- If all arrested Americans were a nation, they would be the world's 18<sup>th</sup> largest. Larger than Canada. Larger than France. More than three times the size of Australia.
- The number of Americans with criminal records today is larger than the entire U.S. population in 1900.
- Holding hands, Americans with arrest records could circle the earth three times.

*<https://www.brennancenter.org/blog/just-facts-many-americans-have-criminal-records-college-diplomas>*



# *SLOWLY REVERSING MASS INCARCERATION (IN CALIFORNIA): CRIMINAL JUSTICE AND CORRECTIONS REFORM*

- AB 109 – “Prison Realignment” – “Triple Nons” supervised by county systems instead of state (2011)
- Prop 47 - reduces certain drug felonies to misdemeanors. (2015)
- Prop 64 – Dismisses marijuana related misdemeanors to infractions (2016)

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- More individuals with criminal records coming back to their communities from county jails. (Approx. 150/month new individuals starting probation in 2015);
- Their records pose barriers to ability to obtain housing, employment and income support – must be addressed to break the cycle of incarceration.
- Re-entry is a public safety concern and is a community responsibility



# *WHAT ARE “REENTRY LEGAL SERVICES” AND WHO IS ELIGIBLE?*

- Any individual who lives in Contra Costa who is experiencing a civil legal barrier because of a criminal record (income/citizenship too);
- Barriers model
  - Mitigate or reduce the collateral consequences of criminal record to increase prospects for permanent housing, employment/income supports, credit, and family stability;
- Community based Approach
  - Be on site, working directly with partner CBOs and public agencies
  - Dynamic system of support



# *SCOPE OF REENTRY LEGAL SERVICES IN CONTRA COSTA COUNTY*

- Housing
  - Appealing Section 8/public housing denials, eviction defense, reasonable accommodation
- Public benefits
  - Appealing denials or disputing overpayments of food stamps, general assistance, CalWorks, Medi-Cal
- Consumer
  - Information about resolving debts/exempt income, credit reporting, identity theft
- Driver's licenses
  - Driver's license reinstatement, resolution of traffic-related debt, representation in traffic court
- Clean Slate
  - P.C. 1203.4 dismissals (“expungements”) Prop 47, Felony Reductions
- Employment
  - Employer background checks, occupational licensing
- Education
  - Getting into school, student loan issues



## *BARRIERS TO HOUSING*

“Prison is the only form of public housing that the government has truly invested in over the past five decades.”

@marclamonthill



## CASE STUDY – “Ms. C.”

- A former Alameda County employee and youth advocate, Ms. C's life took a turn for the worst when her fiancé and daughter's father was killed in a car accident.
- Depressed and grief stricken, she was the victim of severe domestic violence in a subsequent relationship that resulted in her hospitalization with 3<sup>rd</sup> degree burns when her abuser pressed a hot iron to her face and back.
- After her release, she struggled with depression, PTSD and drug dependency which led to her arrest and eventual plea to misdemeanor possession of prescription painkillers and shoplifting.
- While incarcerated awaiting trial she was evicted by default and is presently homeless.
- She applies to join her mother's household at a LIHTC property and is DENIED.
- What do you do? What is important? What info do you need?





## *WHAT IS THE SCREENING POLICY (& WAS IT FOLLOWED)?*

“An applicant who has been convicted of the following in the last seven (7) years will not be admitted:

- Drug related criminal activity or violent criminal activity will not be admitted;
- Other criminal activity that would threaten the health, safety.... Will not be admitted.” *Tenant Selection Plan, Acalanes Court, Walnut Creek (LIHTC)*



## *IS THE SCREENING POLICY LEGAL?*

- No “blanket” ban, i.e., “no felons” policy.  
“...criminal records-based barriers to housing are likely to have a disproportionate impact on minority home seekers.” HUD OGC, April 2016
- May also implicate intentional discrimination. *Id.*
- No arrests. “the mere fact that a man ha been arrested has very little, if any, probative value in showing that he engaged in any misconduct. An arrest shows nothing more than someone probably suspected the person apprehended.” *Schware v. Bd. of Bar Examiners, 353 U.S. 232, 241 (1957)*
- “Ban the Box” Ordinances – SF and Richmond



# IS THE SCREENING POLICY LEGAL?

## RICHMOND FAIR CHANCE ORDINANCE

- The Richmond City Council has adopted the “Fair Chance Access to Affordable Housing Ordinance” to assist formerly incarcerated people to get access to housing. Ordinance 20-16 (adopted December 20, 2016) applies to all providers of affordable housing. The ordinance limits what a landlord can consider about an applicant’s criminal history when deciding whether to rent to someone.
- When considering your application for housing, a landlord **cannot** consider, or ask you for, this information:
  - 
  - If you have been arrested but that arrest did not lead to a conviction;
  - If you have participated in a diversion or a deferral of judgment program;
  - If you had a conviction that has now been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative;
  - If you had a conviction or other matter processed through the juvenile justice system;
  - If you have a conviction on your record that is more than two years old. (The date of the conviction begins at the date of sentencing); or
  - If you were involved or convicted of any offense other than a felony or misdemeanor, such as an infraction.
- A landlord **cannot** ask you for conviction history that is less than two years old until they first:
  - Decide whether you are otherwise qualified to rent the unit.
  - Provide you with a lease agreement that gives you the unit as long as you pass a review of your conviction history.



# *DOES MS. C HAVE THE OPPORTUNITY TO PRESENT “MITIGATING CIRCUMSTANCES”? \**

- ***Mitigating Factors***
- Seriousness of offense
- Length of time since offense
- Age at time of offense
- Number of offenses
- Effect of denial on household and community
- ***Evidence of rehabilitation***
  - Letters of support critical
    - Employer
    - Teacher
    - Case worker
    - Drug or alcohol treatment program
    - Current or prior landlord
    - Parole or probation officer
  - Information from prison or jail about programs completed in custody
- \* If so, what are deadlines??? What is the forum?



# *DOES MS. C. HAVE ANY RIGHTS AS AN INDIVIDUAL WITH DISABILITIES?*

- If a tenant has an obstacle to obtaining or maintaining housing because of a disability, the tenant can **request a reasonable accommodation**.
- A reasonable accommodation is a **change** in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling.
- **RA Formula:**
- **DISABILITY+ NECESSARY & REASONABLE (NEXUS) =**
  - **MUST GRANT ACCOMMODATION**
  - Unless:
    - **Undue financial or administrative burden**
    - **Fundamental Alteration 24 C.F.R. §8.11**
    - **“Direct Threat”**



# *DOES MS. C HAVE ANY RIGHTS AS A DOMESTIC VIOLENCE SURVIVOR?*

- “That an applicant or participant is or has been a victim of domestic violence, dating violence, sexual assault or stalking is not an appropriate basis for denial of program assistance.” Violence Against Women Act
- “HUD agrees that victims of domestic violence, dating violence, or stalking must not be denied assistance or terminated from programs based solely on a criminal history related to domestic violence dating violence, or stalking ....”
- Applies to HUD-assisted and LIHTC

# *FAIR HOUSING & DOMESTIC VIOLENCE: OTHER THEORIES*

- DV survivors aren't a protected class under the FHA or most state fair housing laws, so advocates have used sex discrimination theories.
  - Disparate impact: Has been used to challenge neutral policies that have the effect of treating DV survivors more harshly.
    - ✦ Ex: Failing to make an exception to a “zero tolerance for violence” policy for a DV survivor
  - Disparate treatment: Has been used to challenge actions that were taken against a tenant because of sex-based stereotypes regarding DV.
    - ✦ Ex: “I never rent to abused women because they always go back to the men who beat them.”
- It may strengthen the survivor's case to raise both theories in tandem.



# DOES MS. C HAVE ANY RIGHTS UNDER CREDIT REPORTING LAWS?

- If housing provider takes an “Adverse Action” (denies or increases rent or security deposit) due to information in report, it must give **notice** to applicant:
  - Name, address, and phone of agency
  - Statement that agency did not make decision
  - Notice of right to dispute report
- Private Owners/Management Companies may **NOT** Receive:
  - Arrest only incidents (unless case is still pending)
  - Convictions older than 7 years
  - Dismissed Convictions
- Public Agencies receive expanded records from the DOJ






# *A DYNAMIC SYSTEM OF SUPPORT*

- ***Housing Providers*** – Look critically at admissions policies and assumptions regarding criminal records. “Screen in not out”;
- ***Case managers and Navigators***
  - Housing Portfolio – application materials (see handout)
  - Letters of Support/Other Documentation
- ***Health Professionals***
  - Support Requests for “Reasonable Accommodation” (see handout)
- ***Public Defenders***
  - Explain circumstances of criminal cases
  - Clean Slate work
- ***Domestic Violence Advocates***
  - Critical support and transitional housing.
  - Documentation of survivor status
- ***Civil Legal Aid***
  - Representation at hearing
  - Credit and eviction remediation
  - Disability and Domestic Violence



# *Working with Individuals who are Required to Register as sex offenders*

Using registry status as standard for disqualification is problematic:

- States operate Registries very differently; a “lifetime offense” in California may not be elsewhere;
  - Little nexus to risk of reoffending. For example, registrants might include:
    - indecent exposure or lewd displays related to substance abuse, mental health issue or homelessness
    - women who are convicted of conspiracy to commit sexual abuse for failing to protect a child from abuse
    - Consensual relationships where one partner is older than the other by a few years
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# PC 290 ADVOCACY TIPS

- Is your client eligible for Certificate of Rehabilitation? (P.C. 290.5)
- Theoretical possibility for reasonable accommodation (Non HUD housing)
- SB 384 (Coming... 2021)
- Is your client definitely a “*lifetime* registrant”? (HUD)
- For admissions *before June 25, 2001*, no basis for eviction or termination solely based on a household member’s sex offender registration status (HUD)
- Your client is still entitled to a hearing and procedural protections (HUD)




# REENTRY HOUSING ISSUES

- Who Can I Refer? Anyone:
  - Denied Housing because of a criminal record (esp. if disabled);
  - Anyone is facing eviction or program termination because of a criminal record;
  - Anyone with a history of unlawful detainers judgments;
  - Anyone who requires a “reasonable accommodation”
- What can I look for:
  - Any housing program that says they don’t accept any individuals with criminal records (or felons, or other “blanket bans”);
  - We represent on evictions, administrative hearings and fair housing cases and more **\*\*Strict deadlines apply\*\***



# RIGHTS OF INDIVIDUALS WITH CRIMINAL RECORDS

- Housing Provider may NOT:
    - Access Housing records older than 7 years old (ICRAA)
    - Ask for/use information about arrests not leading to convictions (FHA/ICRAA)
    - Ask for/use information about juvenile adjudications (W&I Sec. 827, *et seq.*)
    - Ask for/use information about convictions that have been “expunged”
    - Deny someone whose criminal record is a function of a disability (“Reasonable Accommodation”)
    - Deny someone whose criminal record is related to a history of domestic violence (“VAWA”)
    - Have a blanket “No felons” policy or otherwise exclude all individuals with criminal records
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## QUESTIONS OR REFERRALS?

- Please don't hesitate to reach out – many issues have strict deadlines.
- Office hours – Thursdays 1-4 at 1735 Telegraph, Oakland, CA.
- Questions → contact Catherine Kimel at (510) 250-5231 or [CKimel@baylegal.org](mailto:CKimel@baylegal.org)
- Adam Poe – [apoe@baylegal.org](mailto:apoe@baylegal.org)

