

Public Housing Policies that

Exclude Ex-Offenders: A House Divided



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Community Voices



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PUBLIC HOUSING POLICIES THAT EXCLUDE EX-OFFENDERS: A HOUSE DIVIDED

by Kay Randolph-Back, J.D., M.A.

In this Issue Brief, Kay Randolph-Back provides a description and analysis of the administrative framework for practices that bar former prisoners from public housing in the United States. In this analysis, based on a review of available literature and data, Randolph-Back explains U.S. Department of Housing and Urban Development (HUD) policies and Public Housing Authority (PHA) common practices, examines categories of exclusion, considers the implications for ex-offenders and their families, and provides recommendations to remedy rigid and discriminatory practices.

Introduction

The number of people in jails and prisons in the United States climbed from 204,211 sentenced inmates in 1973 to 2.2 million in 2005 (Harrison and Beck, 2006). “Mass incarceration” is today’s term for this growth, and statistics indicate that federal and state prisoners are disproportionately people of color. In 2005, 60 percent of inmates sentenced to at least one year in prison were either African American (40 percent) or Hispanic (20 percent). Of these, African American men have the highest rate of incarceration. More than 8 percent of African American males ages 25 to 29 were behind bars in 2005, compared with 2.6 percent of Hispanic men of the same age and 1.1 percent of white men (Harrison and Beck, 2006).

Clear policy choices drove this growth as lawmakers enacted a chain of federal and state statutes over three decades. Strong links in this chain of involuntary confinement are mandatory minimum sentences for drug offenses, waiver of minors into adult courts and/or sentencing, and re-incarceration for any parole violation. Racial profiling in police work and disparate treatment of minorities in sentencing also swell the minority population in jails and prisons.

To contain this growth in prison population, the nation’s taxpayers invested \$43.6 billion in 2001 in state and federal corrections expenditures (Belk, 2006). Yet they

invest far from enough to assure that the more than 600,000 (often poor) prisoners released annually—and millions of other Americans—have access to affordable housing (La Vigne et al., 2004). On the contrary, as a recent NPR series on housing described it, “For more than a decade, the greatest increase in government-subsidized housing has come in the form of cells” (NPR News, 2006, nd, ¶1).

Prisons are big business, so much so that commentators now speak of a “prison-industrial complex.” With the privatization of some prisons, the political campaign contributions of private corrections companies can now be tracked (Belk, 2006). They indicate that many communities court prison construction as they court businesses for job creation and economic development. By contrast, neighborhoods often resist proposals to locate halfway houses for released prisoners in their midst. Yet for many rural areas, the explosion of prison construction has been a kind of housing boom albeit for captives. Incarcerated people count as local residents in census-taking, the added numbers giving some rural communities more political clout.

The law enforcement and judicial practices that work their disproportionate impact on minorities are supplemented by a pincer movement of forces that start at an early age and encircle new candidates for prison.

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One arm of the pincer targets the youngest children. Zero tolerance policies in schools, which reach all the way down into kindergarten, have disproportionate impact on boys and young men of color (Randolph-Back, 2006). These inflexible policies often single out boys and young men of color and put them on a track for lifetimes of punishment. As a result, the schoolhouse-to-jailhouse track is creating a pipeline for incarceration in many communities.

The second arm of the pincer targets individuals who have made it out of jails and prisons in the form of civil disabilities imposed on former prisoners who re-enter their communities. Civil disabilities include denial of education, welfare, and public housing benefits, as well as withholding the ultimate form of participation in a democracy the right to vote. Ultimately, policies and practices that constitute civil disabilities for ex-offenders serve to promote recidivism by denying former prisoners basic opportunities to build stable and productive lives, fulfill parental responsibilities, and form or renew family relationships. High on the list of indisputable necessities is housing. Indeed, both pre- and post-incarceration use of shelters is associated with an increased risk of recidivism (Council of State Governments, 2006).

Often called the “collateral consequences of imprisonment,” these policies and practices extend punishment beyond the prison walls. Taken together, they achieve deliberate and systematic denial of equal opportunity and make a clear statement that all men are *not* created equal in the United States. When Human Rights Watch conducted extensive field work and legal analysis as the basis for measuring “public housing exclusionary policies against human rights standards,” its 2004 report concluded:

“[Our] research demonstrates that these policies are arbitrary and unreasonably overbroad. By singling out whole

classes of people for exclusion in some cases by law; in others, by overly rigid application of screening criteria—these policies violate the rights of individuals who do not actually pose a risk but who are nonetheless denied access to public housing facilities. Such exclusionary policies are also discriminatory. Racial and ethnic minorities suffer disproportionately from exclusionary housing policies because of their overrepresentation among those who experience arrest and prosecution, those who currently live in poverty, and those who seek public housing. Human Rights Watch is not aware of any other country that deprives people of the right to housing because of their criminal histories.” (Carey, 2004, p. 4)

Rules Excluding Former Prisoners from Federally-Assisted Housing

Ex-offenders can be excluded from public housing either by operation of law or by administrative decision-making – giving advocates and policymakers more than one avenue for addressing current barriers to housing. The best option, of course, is to amend federal law and make the statutory framework for administrative decisions more fair, humane, and rational. But even within the current statutory framework, there is room to modify harsh and arbitrary administrative policies and practices.

At present, the administrative framework for policies and practices is this:

- The U.S. Department of Housing and Urban Development (HUD) contracts with around 3300 Public Housing Authorities (PHAs) to administer its two main programs of housing assistance to individuals

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– conventional public housing (providing tenancy in publicly-owned housing) and direct rental assistance (the Section 8 or Housing Choice Voucher program in which the beneficiary finds housing in the private market). The federal department issues regulations and directives to PHAs and evaluates their performance. Also, HUD reviews and approves PHAs’ annual plans, which must include the PHAs’ policies. A key regulation for the issues in this brief is “Denial of admission and termination of assistance for criminals and alcohol abusers.” It is codified in the Code of Federal Regulations at 42 CFR §982.553.¹ Among the directives that are key to this issue brief are those published in HUD’s *Public Housing Occupancy Handbook*, including Chapter 4 on applicants’ suitability for tenancy.²

- Each PHA establishes its own policies for how it will determine the “suitability” for tenancy and manage its programs in compliance with HUD requirements. As noted, the policies are subject to HUD’s review and approval based on their inclusion in the annual plans submitted by each PHA. The practices of PHA staff are also relevant because they may not always be consistent with the PHA’s policies.

To better understand the kinds of barriers these policies have given rise to, the following discussion identifies three categories of exclusion.

Category 1: Absolute Statutory Exclusions

Only two provisions of federal law give PHA administrators no latitude in exclusion from public housing of persons convicted of certain specific crimes. One lifetime ban applies to persons who have been convicted at

any time of manufacturing or producing methamphetamine on public housing premises. The person’s entire household is ineligible. The family cannot be admitted to public housing and, if already living in public housing, must be evicted.

The second lifetime ban excludes persons who are subject to lifetime listing on states’ registries of sex offenders (386,000 individuals in 2001). Human Rights Watch argues that the law imposing this ban contradicts itself because its stated purpose is to exclude dangerous sex offenders but its absolute reliance on registries to implement the purpose catches more than dangerous offenders in its net. Administrators are not given any latitude for case-by-case determination of whether a registrant would endanger other tenants. One court found itself forced to turn down a registrant’s petition to remain in public housing—where he had been living for some time without incident—even though it praised the success of his rehabilitation. The court found the ban harsh but reasonable. (Carey, 2004)

Category 2: Denying and Terminating Housing Assistance for Substance Abuse

Each PHA must set standards that keep out persons who abuse alcohol or use illegal drugs. The focus is on threats to safety, health, and a peaceful living environment. A PHA may allow a household with a substance-abusing member to enter or stay in public housing if the person who has violated the prohibition “demonstrates that he or she is not currently abusing alcohol or illegally using drugs and has been rehabilitated” through, as an example, “[c]ompletion of a supervised alcohol or drug rehabilitation program.” (New Jersey Institute, 2006, p.2)

¹The URL is

http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/cfr_2003/aprqrtr/pdf/24cfr982.553.pdf.

²The department’s handbooks are available on line. The URL for Chapter 4 of the *Public Housing Occupancy Handbook* is http://www.hudclips.org/sub_nonhud/cgi/nph-brs.cgi?d=PIHA&s1=@docn&l=100&SECT1=TXTHLB&SECT5=HEHB&u=./hud-clips.cgi&p=3&r=227&f=G.

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In the 2004 Human Rights Watch report, Carey noted that the exclusionary policies on drug-related activities are overly broad because they are based on faulty assumptions. While drug use is not uncommon among criminals, crime (other than the purchase and possession of the drugs) is not common among drug users. Most do not engage in property or violent crimes. Most do not become dependent on drugs.

Another troubling dimension of this category is the lack of information about how many individuals and families are denied access to public housing on this basis. A September 2005 Government Accountability Office (GAO) report indicated that the available data on number of denials – and additional information about the race of individuals turned away from PHAs – is scanty. Of the approximately 3300 PHAs, only 17 responded to a GAO request to provide data on the race of people denied federally-assisted housing for drug-related criminal activity. Given the tremendous variation across PHAs in policies and application criteria, the lack of data obscures the impact of this arbitrary policy on the families and children most in need of housing.

DOES THIS MAKE SENSE?

A family in a Georgia town had lived in a public housing apartment complex for more than 20 years. All the children were reared in this apartment complex by their single disabled mother. Her youngest son, who was 19 at the time, lived with her. The family had never had police come to the home or had problems in the community. Their apartment had always passed inspection. An incident involving drugs happened at one of the apartments in the complex and police were called in. The young man was mentioned along with several others to the apartment manager. (The police found no drugs, but it was apparent that drugs had been smoked in this apartment because of the smell, but no arrests were made.) Because this young

man's name was mentioned, his mother, a resident for 20 years, was given a choice: she could take her son's name off the lease (and he would not be allowed on the property under any circumstances) or the police would be called and she would be evicted or she could simply leave. She did what any mother would have done. She left. The families of the other people whose names were given to the apartment manager were given the same choice. (Source: Private Communication to Author from an individual in Georgia. 2005)

If a PHA has exercised its authority to evict a household for drug-related criminal behavior, the law mandates that it not allow the household to return to public housing for three years. This serves as a floor; however, in practice the range of bans is three to five years (Government Accountability Office, 2005). The PHA has discretion to re-admit a household sooner under certain circumstances described in federal regulation. One is that a drug rehabilitation program that has the PHA's approval has been completed by the household member whose behavior was the reason for the eviction.

The mindset in the regulation shines through in the language of the second permissible exception to the ban: “the circumstances leading to eviction no longer exist (for example, the criminal household member has died or is imprisoned)” 42 CFR §982.553(a)(1)(i)(B). Three things are noteworthy about how this exception is stated.

First is that the language leaps to the image of an un-rehabilitated drug user (or seller) as a person headed toward early death or imprisonment. It may be easier to deny dignity or rights to people if they are first seen in this way. Second, it is telling that the examples, although offered only as illustrations, do not include the circumstance that the offending household member has voluntarily removed himself or herself from the

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family. This may suggest bureaucratic skepticism that the offending member would really stay away from the household and not make use of the federally-assisted housing. Third, “criminal household member” is used, but elsewhere the regulation explicitly states that the PHA can “terminate assistance **for criminal activity** by a household member...if the PHA determines, based on a preponderance of the evidence, that the household member has engaged in the activity, **regardless of whether the household member has been arrested or convicted for such activity** (emphasis supplied)” 42 CFR §982.553(c). In our nation there is a difference between a crime and a civil infraction. Yet this regulation permits a public authority that is a contractor to a federal agency to denominate an alleged behavior a criminal activity, without satisfying the standard of proof of beyond a reasonable doubt and in the absence of either arrest or conviction! Further, the contractor can then deny a federal benefit based on its determination. It is true that procedures and rights exist for contesting administrative decisions to deny or terminate housing assistance. However, published analyses of the realities of legal protections afforded the subjects of exclusionary public housing policies have found them gravely wanting. Analyses have been done by, for example, Human Rights Watch (Carey, 2004) and the New York State Bar Association’s Special Committee on Collateral Consequences of Criminal Proceedings (2006).

HOW DID WE GET HERE?

Adolphus Belk, Jr., (2006) traces the history of civil disabilities from the “law and order” theme of the Goldwater presidential campaign in 1964 to the present policies. Beginning with the Johnson Administration’s failure to reduce rates of property and violent crime between 1964 and 1968, various initiatives were developed to tackle the root causes of crime and to provide technical and financial assistance to state and local law enforcement agencies under two new laws. In 1968 “law and order”

was again the theme of a Republican campaign. As President, Richard Nixon urged the enactment of three laws to control organized crime, drugs, and drug trafficking that boosted the level of federal support for state and local law enforcement with the proviso that 20 percent of the federal funds be used for corrections. During the Ford and Carter Administrations, crime was a lower priority than other issues in the public’s mind. Their administrations continued assistance to states and localities and introduced certain juvenile justice and parole reforms. The Juvenile Justice and Delinquency Prevention Act of 1974 aimed to provide constitutional and procedural protections to youth under federal jurisdiction, and tied states’ receipt of formula grants to confining juvenile delinquents separately from adult offenders and deinstitutionalizing status offenders. Establishing equitable, fair procedures for parole was the responsibility of an independent national commission created by the Parole Commission and Reorganization Act of 1974. During the mid-1970s scholars laid the intellectual groundwork for a change in criminal justice policy that emphasized victims’ rights, determinate sentencing, and punishment rather than rehabilitation. Between 1984 and 1989, during the presidential administrations of Ronald Reagan and George H. W. Bush, four laws were enacted targeting control of crime, drug abuse, and the international narcotics trade. It is in this time period that denial of access to public housing for drug offenders and other offenders first becomes national policy.

Category 3: One Strike and You’re Out

The Anti-Drug Abuse Act of 1988 set down a new requirement for public housing leases. Under the terms of the lease a tenant, household member, guest or someone else under the tenant’s control would all be forbidden to “engage in criminal activity, including drug-related criminal activity, on or near public housing premises....” Any “such criminal activity shall be cause for termination of tenancy.” 42 USC §1437d(1)(5) (1988)

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Although Congress took some steps to further control access to public housing, President Clinton stepped up the pace when, in his 1996 State of the Union Address,³ he furnished a slogan to describe the principle:

I challenge local housing authorities and tenant associations: Criminal gang members and drug dealers are destroying the lives of decent tenants. From now on, the rule for residents who commit crime and pedal drugs should be one strike and you're out.

Later that year the Housing Opportunity Extension Act of 1996 gave PHAs more authority to deny or terminate housing assistance, and HUD subsequently issued "One Strike and You're Out" guidelines. Among the provisions in the law were the three-year ban discussed above and a directive to the National Crime Information Center to furnish PHAs with criminal records to use in screening. The guidelines:

"required local PHAs to exercise their authority under the new legislation, and also announced plans to tie PHAs' rating and funding levels to the strength of their screening and termination procedures. In 1998, the final substantive piece of legislation in the development of the 'one strike' policy was put in place with the Quality Housing and Work Responsibility Act, which authorized PHAs to deny admission to any individual who, within a 'reasonable time' prior to the date of eligibility for housing assistance, had engaged in 'any drug-related or violent criminal activity or other criminal activity which would adversely affect the health, safety, or right to peaceful enjoyment of the premises by other residents.'" (New York State Bar, 2006, p. 18)

The "one strike" approach set in motion the development of PHA policies that analysts, field researchers, and advocates decry as irrational, arbitrary, unjust, and destructive. "One strike" is a broad blanket approach. It is not targeted on identifying persons who pose risks to residents' safety and well-being. Human Rights Watch's interviews in the field suggest that the approach actually excludes some people who would be the best tenants. At the same time, due to the fundamental contribution of housing to stability in life, "one strike" erects a high barrier on ex-offenders' paths to becoming productive members of society, forming or renewing family ties, and bonding with children left behind during their prison terms.

The "one strike" philosophy and the template for its implementation invite rigidity in practice. In this template, offenses of different types are paired with time periods (see New York State Bar Association, 2006, pages 23-24; also Carey, 2004, page 51). The "one strike, you're out" philosophy is a warm culture for breeding both rigidity in screening criteria and false impressions about what the screening criteria are. Consider the contrasts in the following facts:

- Chapter 4 of HUD's *Public Occupancy Handbook* says, "A criminal record should not automatically exclude an applicant from consideration. The PHA should determine whether the person would be a suitable tenant." 4-1.b(11)
- Human Rights Watch studied many PHAs' policies. It found that "a person who committed a felony within the past five years would be automatically ineligible for housing assistance under every housing authority policy...[it] reviewed]" (2004, p. 72). A common PHA practice is *not* to conduct an individualized assessment but to apply automatic ineligibility.

³Available through <http://www.gpoaccess.gov/sou/index.html>.

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- The damage from this practice is deepened by the PHAs' policy decisions about the "reasonable time" period of ineligibility to attach to each category of offense. Carey (2004) reports the following:

"In New York City...a person convicted of misdemeanor possession of marijuana and sentenced to six months' probation would be ineligible for housing for five years. In Sarasota, Florida, a single drug misdemeanor renders a person ineligible for public housing for four years. In Pittsburgh, Pennsylvania, someone convicted of a violent felony can be ineligible for life—regardless of how exemplary the years following his crime had been. And applicants who have prior offenses in Austin, Texas—no matter how minor—are excluded by the city housing authority for seven years, and by the county housing authority for ten." (p. 50)

- Its field work uncovered shortcomings in data available about how many people are denied admission due to criminal records. Even accurate data about denials would not give the true picture. People decide not to apply when they discover that the full application calls for information about their criminal records. Moreover, applicants are turned away by PHA staff. Some do not even make it to the applications counter because they have heard from prison officials, social service providers, peers or PHA staff that 'people with felonies,' or 'people with drug charges' could not apply.

"They don't even let them turn them [applications] in,' a Birmingham, Alabama attorney told Human Rights Watch, noting that the numbers provided by the housing authority were not reflective of the number of individuals

affected by the PHA's strict exclusion policies. "They turn them away at the applications desk. They don't let them fill it out. That way, they don't have to count them." (Carey, 2004, p. 34)

Action Steps to Address Barriers to Public Housing on Behalf of Former Prisoners and Their Families

Three authorities have the power and responsibility for addressing existing barriers to housing access: Congress, HUD, and PHAs. Three approaches to challenging current policies and procedures are:

1. Ask for Needed Information to Understand the Extent of the Problem for Communities

- Identify the information you want about the number of people the PHAs have excluded and the reasons for exclusion. How many children were in households for which assistance was denied or terminated? How many people with criminal records made it through the screening to qualify for public housing? Ask your local PHAs, HUD, and Congress for the information. Ask that mandates and mechanisms for routinely gathering and reporting the information be developed. Identify the special studies that would help you most. Do you want to know, for example, an estimate of how many people do not apply for housing assistance because they believe a felony conviction automatically and permanently disqualifies them?

In 2005 the Government Accountability Office (GAO) responded to a request from two Congressmen on the impact of several post-incarceration civil disabilities. Impact on minorities was one of the issues. Fewer than 20 PHAs answered the GAO's survey, although these included some very large ones. From this small sample and other research it had done, the GAO estimated "that relatively small percentages of applicants but thousands of persons were denied" various benefits including housing assistance. The GAO emphasizes that

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its research—and that of HUD, which compared PHAs' exclusionary policies in 2000—show that there is wide variation from PHA to PHA. Thirteen PHAs reported terminating a total of 9,249 leases in 2003 of which, as the average among them, 5.6 percent were for drug-related activities. In Memphis, nearly 40 percent of terminations were for drug-related activities, but there were only 28 terminations in all. Philadelphia had the highest number of terminations in the sample, 2,324, but only 5.7 percent of them were for any type of criminal activity and 2.2 percent of them were for drug-related activities. In Atlanta, there were 320 terminations; 78 or 24.4 percent were for any kind of criminal activity, and 38 or 11.9 percent of them were for drug-related activities.

- Ask for valid evidence that exclusionary policies do keep tenants safer. The underlying belief in existing policies is that exclusion increases safety. Advocates must create pressure on proponents to demonstrate that the premise is valid. In writing for Human Rights Watch, Carey (2004) was not able to obtain any valid studies from any proponent of exclusion. PHA managers routinely reported that housing projects were safer without being able to make any valid comparisons of rates of crime with exclusion and without exclusion. In the case of two PHAs in the same geographic area—one for the city and one for the county—with contrasting policies, managers of both reported that safety was enhanced.
- Study the exclusionary policies of the PHAs in your state and your locality. Profile and compare the PHAs, not just for their exclusionary policies but for their governance, lines of accountability, and sources of authority. Also consider their philosophies. Ask HUD what criteria it uses to evaluate PHAs and what it found in its 2000

study comparing exclusionary policies across PHAs.

- Gather the stories of the excluded. Include the stories of children. Gather the stories of newly released prisoners' needs and struggles for housing or of their homelessness. Find success stories and show how success was against the odds.

2. Build on the Public and Policy Attention Focused on the Prisoner Re-entry Movement

The prisoner re-entry movement may open up opportunities to make the case for change in the detrimental public housing policies. Today, as the natural consequence of the public policies that led to mass incarceration, mass return of the once-incarcerated is making its tragic effects felt in urban and rural areas. Floods of ex-offenders are concentrating in a limited number of zip code areas in large cities (La Vigne and Mamalian, 2004; Council of State Governments, 2006). This development has the inevitability of a post-war baby boom, but somehow the nation did not prepare for it. The White House expressed recognition of the exploding need in the 2004 State of the Union Address in which a four-year, \$300 million re-entry initiative that includes transitional housing was announced.⁴

A striking development in New York State illustrates the potential impact of collaboration and advocacy (Center for Community Alternatives, 2006). A statewide organization of churches, direct service providers, and policy organizations worked for several years to require judges to consider how the type and length of each sentence will hurt or help the offender's chances for re-entry and re-integration into the community. How much sense will it make if a sentence is shorter than it might have otherwise been—because research shows that the shorter the time away from the community, the easier the return—if the

⁴Available at www.whitehouse.gov/news/releases/2004/01/20040120-7.html.

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PHA in the community says, “Even if you were sentenced for 18 months, you had the kind of offense that means you won’t be eligible for public housing for four years?”

New programs aimed at helping ex-offenders be better parents as part of their re-integration is another example. Parenting classes may be held for prisoners in the months prior to their release, or visits between a newly-released prisoner and his children and their mother may be arranged while he is staying in a faith-based dorm, as in Georgia. Does the public housing civil disability put a damper on how much good these programs can do? Will the newly released prisoner be unable to secure a home for his children to come to? Will he be unable to himself stay in—and perhaps even unable to visit the children in—the home they share with their mother if it is in public housing because this would violate the terms of the lease she has signed with the PHA? Does the disability disable the children too, denying them access to a parent because the parent is denied access to public housing?

3. Promote Policies that Pinpoint Exclusion on Real Sources of Risk

Today’s policies are overly broad. They are written and applied to exclude a class of people—those convicted of committing crimes—when they should be written and applied to exclude only a subset of that class of people—those who have both been convicted of committing crimes *and* pose a present threat to the safety of public housing residents. The policies attribute a characteristic of some members of the class to all members of the class. This attribution constitutes stereotyping. It is prejudicial. And, in some other legal contexts, attribution of characteristics based on membership in a class is constitutionally impermissible. Because the class of people who have been convicted of committing crimes is disproportionately minority, these policies are also discriminatory. The burden they impose falls disproportionately on people of color.

Further, today’s policies are overly broad because they impose the penalty of exclusion on people who do not belong to the class at all. Some of those penalized are people who have not been convicted of committing crimes or even arrested on suspicion of committing crimes. They have only been alleged to have committed crimes by agencies that the policies expressly do not require to meet the standard of proof of beyond a reasonable doubt.

Others who also do not belong to the class but are penalized are family members of those who have committed crimes. That children will be penalized is an unavoidable consequence of how the policies are written and applied. This consequence is not incidental or collateral; it could be called either intentional or the result of reckless disregard for the inevitable harm to children and their caregivers.

The essence of law is balancing interests. Lawmakers and courts perform the essential social function of balancing competing interests in a way that protects and preserves the well-being of civil society. Public housing exclusionary policies—some enshrined in federal law, some written and applied to implement federal law—fail miserably in carrying out that social function.

Recommendations

To the Congressional Level of Authority in Public Housing Policy state and local advocates and policymakers should recommend the following:

- Enact the Enhanced Second Chance Act to fund demonstration re-entry programs, research on re-entry issues, and a public study aimed at identifying the federal and state re-entry barriers and disabilities that should be lowered or lifted entirely in order to foster ex-offenders’ re-integration into communities.
- Enact a requirement that PHAs use individualized evaluations of each applicant with a criminal record to

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determine suitability as a tenant and do not make any applicant automatically ineligible due to a criminal record.

To the HUD Level of Authority in Public Housing Policy state and local advocates and policymakers should recommend the following:

- Establish data reporting standards for PHAs that address the effects of criminal records on determinations and the impacts of admissions and denials related to criminal records on people of color.
- Adopt new policies to require PHAs to carry out individualized evaluations of each applicant with a criminal record to determine if the applicant would pose a threat to other tenants based on evidence of rehabilitation and the relationship of the offense to safety and quality of life in public housing. New policies should also require PHAs to consider how the applicant's access to public housing will affect family formation or reunification, minor children, and the chance that the applicant will become homeless.
- Mandate that PHAs adopt policies that limit their use of criminal records in individualized determinations of risk to those that are no more than 10 years old (except in extraordinary circumstances), contain only convictions (unless there is a pattern of continuing arrests), and involve only offenses of relevance to suitability as a tenant.
- Require regular assessment through valid research protocols of the impact of the civil disability related to public housing on public safety and safety in public housing.
- Train staff of PHAs in individualized evaluations and in communications with applicants and other external audiences that promote accurate understanding of screening criteria related to felonies.

To the PHA Level in Public Housing Policy state and local advocates and policymakers should recommend the following:

- Adopt new policies consistent with the recommendations above at the HUD level.
- Strengthen due process in cases of denial of assistance and termination of assistance.
- Form coalitions for negotiating with PHAs. Be aware that advocates have negotiated and secured change. For example, the Homeless Representation Project helped the PHA in the city of Baltimore draft policies that clarified language about “involvement” with criminal activity and set the disqualification period for persons who had committed felonies at three years and that for persons who had committed misdemeanors at 18 months (Vozzella, 2003). Talk with other groups that have successfully advocated for change. Develop your proposal for shifting policy toward judgment-based practice. Know the relevant facts. Have your local case studies ready to offer. Understand the sense of dilemma PHA managers may feel; they can be afraid to take a chance by giving a second chance; they may believe it is safer to rely on a blanket ban than on agency staff's case-by-case evaluation of the suitability of an applicant with a criminal record. Also be aware that philosophies can vary from PHA to PHA; Human Rights Watch's field interviews identified, for example, a PHA with a social work philosophy of wanting to give people the chance to show what they could do.

There is a precedent for a progressive change in policy in Georgia. Although it came out of litigation, negotiation was presumably part of the process. In 1995 a consent decree was entered in the case of *Bonner v. Housing Authority of Atlanta*, which had been brought by the Atlanta Legal Aid Society. Human Rights Watch reports that “[t]he unpublished consent decree requires

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the PHA to limit their review of criminal convictions to those obtained within five years of the application, consider only convictions and not arrests, and to take into consideration evidence of rehabilitation. Legal Aid attorneys elsewhere in Georgia have used the order to pressure other PHAs to amend their policies accordingly” (2004, pp. 59-60).

Related Recommendations for state and local advocates and policymakers.

- Make connections with parole authorities and re-entry services providers around the issues of transitional housing and permanent housing and the interface between them (Williams, 2007). Although releasing prisoners to supervision can be a common practice in a state, consider how well the supervision is preparing ex-offenders for the future. A case in point is Georgia, where 79 percent of prisoners were released to supervision in 2002 (La Vigne and Mamalian, 2004). In 2002, 363 parole officers were managing 19,000 cases in Georgia for an average of 53 parolees per officer. Is this a good ratio for reducing recidivism and fostering formation of families and development of good work histories? Or consider Denver where parolees or probationers are often released to shelters with the order that they stay there for a certain number of years; yet drugs and alcohol are often readily available in shelters.⁵ Does this kind of setting optimize their chances for putting their lives on a positive course?

And how well are public housing authorities preparing to receive ex-offenders as they move out of transitional housing? What kind of information can be compiled to inform their preparations? The Urban Institute compiled and interpreted extant data for several states, including Georgia (La Vigne and Mamalian,

2004). Its report includes maps by zip code of released prisoners’ locations. The heavier concentrations of prisoners released in the Atlanta area can be seen, for example. Most prisoners released in Georgia in 2002 were unmarried and aged 20 to 50. The average number of children for the entire group of prisoners who were parents was 2.3. Out of the total of 16,088 released individuals, six percent had four children and four percent had five or more children. What are the opportunities for public housing to be an instrument supporting family re-integration? Housing authorities often establish preferences for certain groups, such as the elderly. Members of these groups are moved up on the waiting lists; this can be important because the wait from the time of being listed to the time of getting housing can be 10 years! Should ex-offenders with children be given preference? This would be a significant policy shift—policy would go from keeping ex-offenders out to giving them preference in some cases. If such a shift were contemplated, what knowledge would parole authorities and re-entry services providers bring to the table for exploration of the potential benefits to the hundreds of children of newly released prisoners in Georgia in 2002 alone?

- Look for the links between public housing and the private market in your state and locality. Access to housing in the private market is crucial to positive futures for ex-offenders. This is due to the dire shortage of public housing in the United States. Yet ex-offenders encounter high barriers to housing in the private market throughout the country. Landlords everywhere, for example, commonly turn down ex-offenders. The New York State Bar Association’s Special Committee on Collateral Consequences of Criminal Proceedings (2006) has new and groundbreaking analysis of barriers in its state and proposed remedies. Its report could be a model

⁵ Personal communication with M. Carter, Men’s Health Initiative Patient Navigator, Denver Health, November 27, 2006.

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to help other states begin to address both practices that are widespread and practices that may be more localized. A remedy is proposed for exclusions by landlords that might be considered by state policymakers anywhere, namely, to treat such exclusions as impermissibly discriminatory. An example of a problem tied to a particular state law is prosecutors' use of the state's "Bawdy Law," which works an exclusionary hardship in private housing comparable to exclusionary policies in public housing.

bed costs \$140 a month; he pays \$10 a week for drug classes, \$10 a month for the parole fee, and \$20 a month in restoration.

He stays remarkably upbeat.

(Source: Personal communication with Elizabeth Whitley, Denver Health, November 30, 2006)

DOES THIS MAKE SENSE?

Jésus Gonzalez (not his real name), 51, was released from state prison about 18 months ago. He is disabled, with polio, Hepatitis C, arthritis, problems with his eyesight and problems with his skin (He was burned on 45 percent of his body as a young man). The parole department placed him at a shelter that charges \$35 a week for a guaranteed bed. Jésus has a sister in town with whom he could stay, with but the parole system would not let him go there because there are alcohol and guns in her house. There are drugs, booze, and guns a plenty at the shelter, a health outreach worker reports.

Jésus served two years in prison and has been placed on three years of parole. He has to stay at the shelter to which he was assigned until he gets "acceptable housing," which he can't get because he has a felony and no one will rent to him.

Jésus is getting Assistance to the Needy and Disabled while the health agency works on getting him SSI. This cash assistance program only pays him \$230 a month; his

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