



Civil Rights Considerations in Relying on Criminal Backgrounds

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- A study by Wilder Research in Minnesota commissioned by four nonprofit landlords asked how much a criminal background really mattered in terms of housing success
- The research shows that for the most part, a criminal background had little effect on housing success
- Wilder Research, “Success in Housing: How Much Does Criminal Background Matter?” *available at*
https://www.wilder.org/sites/default/files/imports/AEON_HousingSuccess_CriminalBackground_Report_1-19.pdf



Wilder Research Outcomes

11 of 15 criminal offense categories had no significant effect on housing outcomes.

These categories included:

- Marijuana possession
- Alcohol-related offenses (other than DUI)
- Serious traffic offenses (other than DUI)
- Minor public order offenses
- DUI/DWI or reckless driving
- Other minor violence-related offenses
- Minor drug-related offenses
- Disorderly conduct
- Prostitution
- Domestic violence
- Other violent offenses

4 categories of crimes /may have a statistically significant effect:

Fraud

Assault

Property offenses

Major drug-related offenses.

These offenses increase the risk of negative housing outcomes by 3 to 9 percentage points (at most). However, the research found that these effects may be overstated due to the study's data limitations.



Wilder Research Outcomes

- The effect of a prior criminal offense on a resident's housing outcome declines over time.
 - The effect of a misdemeanor conviction declines after 2 years
 - The effect of a felony conviction declines after 5 years
- Criminal offenses that occurred more than 5 years prior to move-in have no significant effect on housing outcomes.



Summary of Takeaways

- Don't rely on the fact of an arrest to make an adverse decision
 - This applies to applicants or current tenants; if a current tenant make a decision based on conduct, not arrest
 - Recommend that you don't ask about arrests on the application; it's not illegal to ask about arrests but someone is going to want to know why you're asking. What's your answer?
- Don't use a blanket ban based on any type of conviction
 - This criteria sweeps too broadly, it will likely disqualify qualified applicants and possibly draw a civil rights complaint
- Don't use an unreasonably long look back period
 - No to a 99 year look back period
 - No to a 20 year look back period
 - No to having the same look back period for felonies/misdemeanors/some misdemeanors
 - The conduct varies on the severity of the crime
 - The conduct varies based on the nature of the conduct



Summary of Takeaways

- Don't evict a successful tenant because you discover a conviction on her or his record after admission (or after years of tenancy)
- Don't forget to think about reasonable accommodations if the applicant or tenant has a disability
- Don't forget to offer an "individualized assessment"



Summary of Takeaways

- Do have a clear policy and apply it consistently.
- Do distinguish between different types of convictions and how the conduct is related to being a good tenant.
- Do train your staff on how to apply your policy
 - Audits show high levels of unequal treatment based on race to applicants with similar criminal histories
 - Up to 50% of the time audits testing showed black applicants with an acknowledged criminal background are treated worse than white applicants with the same or similar criminal background
- Do have a clear policy and practice that allows every applicant with a criminal background that you intend to reject to be offered the opportunity to make her or his case for admission/continued tenancy before rejection.



Summary of Takeaways

- An “individualized assessment” should be offered and performed by one person so outcomes are consistent and it should be done by someone who was not the original decision maker.



Case Example

- Fair Housing Act lawsuit alleging racial discrimination resulting from application of a criminal background policy
- Settled in 2019
- Resulted in adoption of a policy that is now being used by other landlords
- The criminal background policy was on the property's application.
- Information about the lawsuit, the settlement, the policy and HUD guidance is provided



Federal Court Lawsuit

- Sterling Glen Apartments, Chesterfield Virginia
- 300 units

Criminal background policy alleged in the federal lawsuit prohibited rental for:

- Any felony conviction,
- Any terrorist related conviction
- Any illegal drug related conviction
- Any prostitution related conviction
- Any sex related conviction
- Any cruelty to animals

related conviction

- Any of the above related charges resulting in “Adjudication Withheld and/or “Deferred Adjudication”
- Active status on probation or parole resulting from any of the above



Policy Calls for a Three Step Process

- Qualify the household on factors other than criminal background first, like income, credit score, etc. Provide a tentative acceptance, contingent on a criminal background check
- After receipt of the background check, determine whether there is a covered criminal background. If there is not, accept and house the applicant.
- If there is a covered criminal background, offer the applicant in writing the opportunity for an individualized assessment and conduct the assessment. Provide the final decision in writing.



Convictions Covered?

- What crimes are covered?

Felony criminal convictions within the past five years related to the following categories of offenses:

- (1) property offenses
- (2) major drug offenses
- (3) fraud offenses
- (4) major violent offenses against persons and
- (5) sex offenses

- What is NOT covered?

- Arrests, charges, expunged convictions, convictions reversed on appeal, vacated convictions, offenses where adjudication was withheld or deferred, pardoned convictions, sealed juvenile records.
- It does not treat people differently based on whether the applicant is on probation or parole.



Individual Assessment Evidence

- Offer the applicant or tenant the opportunity to provide information for an individual assessment of their eligibility for tenancy based on their criminal background. Policy says applicant has 14 days to provide the information.
- Recommendations or assurances from employers, probation officers, case managers, recovery centers, transitional housing entities, family members or the applicant.
- This can be a paper process or a verbal process



Kinds of Evidence to Consider

- Relevant individualized evidence might include:
 - The facts or circumstances surrounding the criminal conduct;
 - The age of the individual at the time of the conduct;
 - Evidence that the individual has maintained a good tenant or employment history before and/or after the conviction or conduct;
 - Evidence of rehabilitation efforts
 - Any information about the applicant that indicates good or bad conduct since the offense
 - Whether the conduct/conviction arose from the applicant's status as a survivor of domestic violence, sexual assault, stalking, or dating violence;
 - Whether the conduct/conviction arose from an applicant's disability, including mental illness; and
 - Any other information related to whether the applicant's specific criminal history creates the potential that the property's current residents, employees, or property will be exposed to a heightened risk of crime.
 - A mistake was made



Notification of Decision

- When the decision is made, notify the applicant in writing, referring to the individualized assessment and the final decision to accept or not accept.
- On-site manager should retain all records



Disability Case Example

- Conduct, including conduct that may result in a conviction, when it originates from a disability, may require special reasonable accommodations:
 - Virginia case example:
 - Mother attempted to add her son to her lease. Son had a misdemeanor conviction for exposure that resulted from his mental disability. Landlord refused to accept the son.
 - Court decision says in light of the following, accommodation in the form of an exception to the property's criminal background policy should have been made:
 - Indecent exposure is not categorically a crime that poses a direct threat to the health or safety of others
 - The son had received treatment, he had no subsequent episodes, and his condition had stabilized



Assisted Housing Exceptions

- Federal statutes and regulations permit certain exclusions by PHAs and other federally assisted housing.
 - For three years from the date of eviction if any household member has been evicted from federally assisted housing for drug-related criminal activity
 - Who are subject to a lifetime registration requirement under a State sex offender registration program
 - Who have ever been convicted of drug-related criminal activity for manufacture of methamphetamine on the premises of federally assisted housing
 - Drug-related criminal activity engaged in on or near the premises by any tenant, household member, or guest
 - Current use of an illegal drug
 - Conduct that threatens the health or safety of other tenants.



- Questions?