



***LOCKED OUT:***  
**CRIMINAL HISTORY BARRIERS TO**  
**AFFORDABLE RENTAL HOUSING**  
**IN AUSTIN & TRAVIS COUNTY, TEXAS**

**October 2016**

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This report is a publication of the **Austin/Travis County Reentry Roundtable**, a collaborative committed to promoting public safety through effective reentry and reintegration of formerly incarcerated persons and individuals with criminal histories.

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## *Executive Summary*

Every year in Travis County, more than 2,400 individuals are released from prison and almost 20,000 additional individuals are served through community supervision systems including parole and probation.<sup>1</sup> The number of individuals with a history of criminal justice involvement is much greater, of course, with nearly one in three U.S. adults holding a criminal record.<sup>2</sup> Whatever the final disposition, criminal records present significant barriers to securing safe and decent housing, which typically impose stringent screening criteria and qualifying income requirements.

In 2015, the Austin/Travis County Reentry Roundtable (Roundtable) undertook the task of assessing the criminal background screening policies of local publicly subsidized housing. This report is the result of that research and it provides an overview of the Roundtable's findings and recommendations to inform policymakers, housing industry professionals, and other community leaders in better protecting the fair housing rights and overcoming barriers to housing for persons with criminal backgrounds in Austin and Travis County.

A report by the Sargent Shriver National Center on Poverty Law, *When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing*, served as the foundation for this research.<sup>3</sup> The report was based on a review of more than 300 written criminal background screening policies used by different federally subsidized housing developments. The Shriver Center report outlines four key barriers:

- Unreasonable lookback periods
- Failure to consider mitigating circumstances
- Equating arrests with convictions
- Overbroad categories of criminal activity

The Roundtable's Housing Work Group (Work Group) set out to assess whether these same barriers affect persons with criminal history seeking housing locally. The Work Group referred to the City of Austin's inventory of multi-family affordable housing properties and identified 113 relevant properties. Volunteers contacted 107 of these properties with a request to view the property's tenant selection criteria or criminal background screening policy. Data was collected from 80 of these properties.<sup>4</sup>

The Work Group analyzed the available criteria using the three areas of criminal activity for which the U.S. Department of Housing and Urban Development (HUD) has identified that discretion can be used to deny housing: 1) drug-related criminal activity, 2) violent criminal activity, and 3) criminal activity that poses a threat to the health, safety, and welfare of other residents and property.<sup>5</sup> This analysis was then compared with the Housing Authority of the City of Austin's (HACA) screening criteria used in its Housing Choice Voucher (HCV) program, chosen as a local reference point because of its relationship to the affordable housing market.<sup>6</sup> As the data illustrates, some individuals who are eligible for HACA's program are unable to access other affordable housing properties due to their criminal history.

## Key Findings

- **Lack of transparency & compliance with the Texas Property Code**

Of the 80 properties contacted, 32 (40%) provided incomplete or vague criminal screening criteria, and only one property posts its tenant selection criteria on its website.

- **Unreasonable lookback periods for considering criminal backgrounds**

Notwithstanding HUD's warning that the use of blanket bans on renting to people with criminal records may violate the Fair Housing Act, three surveyed properties ban *all* criminal activity, whereby any criminal record would result in denial. In addition, 49% (39 of 80) ban all felonies, and 38 of those properties have lookback periods of seven years or more for felony offenses, with 20 (25%) properties imposing a lifetime ban for any felonies.

- **Failure to consider mitigating circumstances**

Less than 20% (15 of 80) of the properties outline an appeals process in the screening criteria. The opportunity to offer mitigating circumstances, e.g., time since offense, nature of offense, employment history or participation in treatment or case management services, may provide second chances for individuals who have the capacity to make good tenants when they might otherwise have been denied.

- **Equating arrests with convictions**

Approximately one quarter of the properties surveyed (18 out of 80) consider an applicant's arrest history as evidence of criminal activity, regardless of final court disposition.

- **Overbroad categories of criminal activity**

Twenty properties (25%) include "unclassified offenses" as a ground for denial. Some properties list "patterns" of drug-related offenses, abuse of alcohol, or bans for persons who are on probation or parole.

## Recommendations

### 1. Partnerships

The Roundtable is committed to convening *public and private housing industry partners* to find common sense solutions to enhance housing access for persons with criminal backgrounds. It is critical to engage all property owners on the new fair housing guidance and to support efforts to create more transparent and holistic screening processes.

### 2. Education

Some property management representatives may not fully understand their legal obligations under the Fair Housing Act. Developing policies and practices that ensure *transparency* and align with recent HUD guidance in terms of arrest records and fair housing is critical and should be inclusive of third-party companies that conduct background checks.

### 3. Accountability

Properties must be held accountable for ensuring that they have legally adequate policies and procedures to meet HUD requirements. Entities administering HUD funding must *strengthen scoring criteria and monitoring processes* to ensure sub-recipient compliance with affirmatively furthering fair housing obligations.

## Overview

Every year in Travis County, more than 2,400 individuals are released from prison and almost 20,000 additional individuals are served through community supervision systems including parole and probation.<sup>7</sup> The number of individuals with a history of criminal justice involvement is much greater, of course, with nearly one in three U.S. adults holding a criminal record.<sup>8</sup> Whatever the final disposition, criminal records present significant barriers to securing safe and decent housing, which typically impose stringent screening criteria and qualifying income requirements.

The criminal screening criteria used by federally subsidized properties has been increasingly scrutinized by the U.S. Department of Housing and Urban Development (HUD) for racially discriminatory practices. Research indicates that racial and ethnic minorities are disproportionately arrested and imprisoned, meaning that these same populations are also disproportionately burdened with criminal histories and, by extension, disproportionately affected by criminal screening criteria used to determine housing eligibility.<sup>9,10</sup>

Evidence of disproportionate impact is well-documented throughout the criminal justice system.<sup>11</sup> Locally, the Community Advancement Network's 2015 community dashboard report highlights that "Blacks are more likely than Whites, Hispanics, or others to be booked into jail in Travis County. People identifying as Black account for about 21% of people booked into jail, but only 8% of Travis County's adult population. This results in a disproportionality ratio of 2.6, indicating a highly disproportionate representation for the Black population."<sup>12</sup> In fact, Travis County's jail incarceration rate for Blacks is the highest of all urban areas in Texas at 1036.3 per 100,000 persons, with Harris County in second at 747.5 per 100,000 persons.<sup>13</sup> Such a stark disparity suggests that these same minorities will be similarly impacted disproportionately by the negative collateral consequences that flow from criminal justice involvement.

Travis County and City of Austin entities responsible for administering federal housing funds – through Public Housing and Project-Based Section 8 programs, Community Development Block Grants, or HOME Investment Partnerships – must lead by example and promote housing policies that protect the fair housing rights of people with criminal records, and ensure, in the words of HUD Secretary Julian Castro, that "families who pose no risk to community safety aren't unduly punished."<sup>14</sup>

This report aims to inform policymakers, housing industry professionals, and other community leaders to better protect the fair housing rights and overcome barriers to housing for persons with criminal backgrounds in Austin and Travis County. The report first reviews relevant legal precedent and regulatory actions relating to fair housing for persons with criminal backgrounds. The report next summarizes criminal background policies from area affordable housing properties and compares these policies with HACA's screening criteria. Third, the report speaks to the need for decisive leadership, highlighting local partners and recent reforms undertaken in New Orleans. Finally, the report recommends an approach and specific actions to move the conversation forward.

## ***Fair Housing Protections for Persons with Criminal Backgrounds***

The federal Fair Housing Act (the Act), codified in Title VIII of the Civil Rights Act of 1968 and later amended by the 1988 Fair Housing Amendments Act, prohibits discrimination in the sale, rental, or financing of housing based on race, color, religion, sex, national origin, disability or familial status.<sup>15</sup> Furthermore, the City of Austin Housing Ordinance has additional protections for age (18 years or older), status as a student, sexual orientation, gender identity, and marital status.<sup>16</sup> While the Act does not include an individual’s criminal history among the enumerated list of protected characteristics, recent HUD guidance and the U.S. Supreme Court’s 2015 ruling in *Texas Department of Housing & Community Affairs v. The Inclusive Communities Project, Inc.*,<sup>17</sup> upholding a “disparate impact” theory of discrimination, make clear that the Act’s protections extend equally to this population and has led to a growing reliance on the Fair Housing Act as a tool for breaking down housing barriers and ensuring safe and stable housing for persons with criminal records.

### **Disparate Impact Discrimination**

Disparate impact is a legal theory by which a policy or practice may be held to be discriminatory if it has a disproportionate “adverse impact” against an otherwise protected class of persons. The theory applies even where policies or practices are facially-neutral and without discriminatory intent, thereby enabling individuals to challenge practices that have a “disproportionately adverse effect” on a protected class and are not otherwise “necessary to serve a substantial, legitimate, nondiscriminatory interest.”<sup>18</sup> In its landmark decision, *Texas Department of Housing & Community Affairs v. The Inclusive Communities Project, Inc.*, the U.S. Supreme Court recognized disparate impact claims under the Fair Housing Act.<sup>19</sup> Or as HUD Secretary Julian Castro put it, “Last year, the Supreme Court affirmed what many of us have always believed: that the Fair Housing Act prohibits discriminatory policies, whether they’re intentional or not.”<sup>20</sup>

As the agency charged with enforcing the Fair Housing Act, HUD has sought to ensure that PHAs and other entities receiving federal housing funds do not engage in practices or create policies that have the effect – intended or otherwise – of denying individuals their legally protected rights. Most recently, this attention has focused on the application of criminal background screening policies.

## **CHRONOLOGY OF HUD GUIDANCE**

2010: President Obama establishes the Federal Interagency Reentry Council.

2011: HUD Secretary Shaun Donovan issues letter reminding PHAs that the agency requires lifetime bans from its properties for only two categories of criminal conduct.

2012: HUD issues letter to all owners and agents of HUD-assisted properties emphasizing the importance of stable housing for formerly incarcerated individuals.

2015: In *Texas Department of Housing & Community Affairs v. The Inclusive Communities Project, Inc.*, the U.S. Supreme Court upholds the use of disparate impact claims in the Fair Housing Act.

2015/2016: HUD issues guidance on the treatment of renters and buyers with criminal arrest records, and landlords’ and sellers’ obligations under the Fair Housing Act.

## The Need for “Second Chances”

The Federal Interagency Reentry Council, created in 2010, requires each of its member agencies to identify and address collateral consequences affecting individuals with criminal backgrounds and their families. As a founding Council member, HUD has provided repeated guidance on interpreting agency regulation, expressly cautioning PHAs and others against the use of overly restrictive criminal background screening policies.

Former HUD Secretary Shaun Donovan issued letters in 2011 and 2012 urging PHAs and other HUD-funded housing providers to offer “second chances” to formerly incarcerated individuals, and offering informal guidance suggesting the adoption of flexible admissions policies that enable these individuals to secure housing and rejoin their families.<sup>21</sup> The first letter, issued only to Public Housing Authorities, reminded PHAs of their considerable discretion in admissions, as many excluded nearly anyone with a criminal record at that time.<sup>22</sup> The second letter, signed by Secretary Donovan and Acting FHA Commissioner Carol Galante, was sent to owners and agents of HUD-assisted properties emphasizing the importance of providing stable housing to formerly incarcerated individuals. The letter asked property owners to allow ex-offenders to rejoin the community to the extent that a balance between reuniting ex-offenders with their families and ensuring the safety of all residents could be maintained.<sup>23</sup> This guidance was intended to allow families to reunite, to remain in safe and decent housing, and to stay in their established communities, and for children to remain in their neighborhoods and schools.

In November 2015, HUD issued guidance on criminal background screening processes, clarifying that an arrest is not proof of criminal activity.<sup>24</sup> On its own, an arrest should never justify denying a person admission, terminating their assistance, or evicting tenants in public or federally-assisted housing. Moreover, PHAs and other federally assisted housing providers may not engage in criminal screening practices that disparately impact people of color or other protected classes if there is no substantial, legitimate, nondiscriminatory purpose justifying the particular policy, or where a less discriminatory alternative exists to achieve the same purpose. In lay terms, the guidance warns strongly against using only arrest records to make housing eligibility decisions as well as so-called “one strike” policies that deny admission or require eviction for criminal activity by any member of a household. The guidance also encourages PHAs and other housing providers to look at the individual and the criminal activity to determine its connections, if any, to the safety and health of other residents. For drug-related activity, these considerations could involve the participation in a drug rehabilitation program or other types of rehabilitation.

Most recently, in April 2016, HUD issued guidance targeted at all housing providers, including private landlords. This guidance states that blanket bans on renting to people with criminal records are in violation of the Fair Housing Act and that landlords can be sued and face penalties for discrimination. The guidance clarifies that “policies that exclude persons based on criminal history must be tailored to

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*...arbitrary “One Strike” policies that bar anyone with a prior arrest cannot be used in public or private housing. It used to be that if someone was arrested for a drug offense their entire family would be kicked out of public housing. It was a harsh policy that likely did more harm than good.*

HUD Secretary Julian Castro, April 4, 2016

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serve the housing provider’s substantial, legitimate, nondiscriminatory interest and take into consideration such factors as the type of the crime and the length of the time since conviction.”<sup>25</sup>

## **An Ongoing Obligation to Affirmatively Further Fair Housing**

HUD’s efforts to ensure fair housing opportunities extend beyond protecting against overly restrictive or discriminatory actions. Indeed, the Fair Housing Act imposes an express affirmative obligation on those receiving federal housing funds. Affirmatively Furthering Fair Housing (AFFH) is a legal requirement that federal agencies and federal grantees actively work to further the purposes of the Fair Housing Act. This obligation to affirmatively further fair housing has been in the Fair Housing Act since 1968, and HUD has long required grantees receiving funding for housing programs to demonstrate steps taken to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities free from discrimination.

HUD recently clarified and strengthened this AFFH obligation. In July 2015, HUD released a final rule on Affirmatively Furthering Fair Housing providing guidance to states, local governments, and PHAs receiving HUD funds in proactively addressing “segregation, conditions that restrict fair housing choice, and disparities in access to housing and opportunity.”<sup>26</sup> Proactively addressing decades of systemic and institutional segregation and lack of opportunities requires affordable housing providers to closely examine, alongside affected stakeholders, all tenant selection policies including criminal background screening, and their effect on access to housing.

## ***Key Barriers to Accessing Affordable Rental Housing in Austin & Travis County***

Much of HUD’s recent guidance draws on findings in a 2015 report, *When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing*, published by the Sargent Shriver National Center on Poverty Law.<sup>27</sup> The report was based on a review of more than 300 written criminal background screening policies used by federally subsidized housing developments across the U.S. Based on this review, the Shriver Center report identified four key barriers:

- Unreasonable lookback periods
- Failure to consider mitigating circumstances
- Equating arrests with convictions
- Overbroad categories of criminal activity

When the Work Group initiated this project in 2015, it set out to analyze whether these same four barriers similarly affect persons with criminal history seeking housing in Austin and Travis County.

## **Methodology**

The Work Group convened a group of volunteers to collect the tenant screening criteria, including criminal background policies, for subsidized affordable housing properties in Austin and Travis County. To determine which properties to review, the Work Group referred to the City of Austin’s inventory of affordable housing properties.<sup>28</sup> The list included 113 properties participating in various affordable housing programs, including the Rental Housing Developer Assistance (RHDA) Program, Austin Housing Finance Corporation (AHFC) Private Activity Bonds, SMART Housing, and

City of Austin Developer Incentive Programs. Volunteers contacted 107 of these properties with a request to view the property’s tenant selection criteria or criminal background screening policy. Data was collected from 80 of these properties.<sup>29</sup>

The Work Group analyzed the available criteria using the three areas of criminal activity for which HUD has identified that discretion can be used to deny housing: 1) drug-related criminal activity, 2) violent criminal activity, and 3) criminal activity that poses a threat to the health, safety, and welfare of other residents and property. This analysis was then compared the screening criteria HACA uses in its Housing Choice Voucher program. This program was selected as the local point of comparison because it represents the largest pool of local subsidized housing units covered by a single set of screening criteria. The Work Group also assessed the criteria according to the barriers identified in the Shriver Report.

## Summary of Findings

The findings from the Roundtable’s research correlate with the four barriers previously identified by the Shriver Center. In addition, the Work Group identified several local barriers, including an overall lack of transparency and failure to comply with the Texas Property Code’s mandate that tenant selection criteria must be provided at the time of application, challenges with third-party screening companies, and confusing and circular language in property screening criteria.

### Unavailability of Written Tenant Selection Criteria

The Texas Property Code requires that “at the time an applicant is provided with a rental application, the landlord shall make available to the applicant printed notice of the landlord’s tenant selection criteria and the grounds for which the rental application may be denied.”<sup>30</sup> Furthermore, the Texas Department of Housing and Community Affairs (TDHCA) maintains requirements for all multi-family

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### ***Lack of Transparency and Compliance with Texas Property Code***

Of the 80 total properties contacted, 32 (40%) provided incomplete or vague criminal screening criteria, and only one property posted tenant selection criteria on its website.

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properties receiving funding through the department, including properties funded through the federal Housing Tax Credit program. Chapter 10.610 of the TDHCA Uniform Multifamily Rules states that all owners must maintain written tenant selection criteria that should “avoid the use of vague terms such as ‘elderly,’ ‘bad credit,’ ‘negative rental history,’ ‘poor housekeeping,’ or ‘criminal history’ unless terms are clearly defined within the criteria made available to applicants.”<sup>31</sup>

Only one property discusses the availability of its tenant screening criteria to prospective applicants in its tenant selection plan, noting, “the Tenant Selection Plan is available to the public upon request. It will be posted in a common area of the rental office. It may be reviewed at the above location during normal office hours. All applicants will be provided a copy of this plan and will be required

to sign an acknowledgement form stating they have read and understand the plan." Obtaining the remaining criteria, however, requires asking a representative for that information. Furthermore, of the 80 tenant screening criteria that volunteers obtained, only one is available on the property's website. A second property includes some tenant screening information on its website, but it uses vague language, stating "certain misdemeanors ...will result in denial of an Application for Residency" without elaborating on which misdemeanors will be considered. Making screening criteria available only to walk-in prospective tenants results in many barriers, including a more time-consuming housing search process and difficulty for people with limited access to transportation.

### Unreasonable Lookback Periods

A "lookback period" refers to the length of time that an offense remains relevant to the decision to accept or deny a request for housing. While it has issued no formal guidance on the matter, HUD recommends lookback periods of five to seven years based on studies showing that an individual with a prior criminal history but no new offense for at least seven years is no more likely to reoffend than someone who has no criminal history.<sup>32</sup> The Shriver Center study, however, found many PHAs with much longer lookback periods, up to 20 or 25 years in some cases.<sup>33</sup> In addition, some properties had no time limits, permanent bans, or compounding lookback periods that increase barriers to finding housing.<sup>34</sup>

With no federally mandated guidelines on what constitutes a reasonable lookback period, the Roundtable compared the lookback periods of the selected properties with those used by HACA for its Housing Choice Voucher Program (HCV Program). Compared with other PHAs, HACA's HCV program screening policies are more tolerant and offer a good benchmark for determining which offenses to consider and for how long to deem an offense relevant for eligibility screening.

HUD has delineated three overarching categories of criminal activity in which discretion is granted in making decisions to accept or deny housing: drug-related criminal activity, violent criminal activity, and criminal activity that poses a threat to the health, safety, and welfare of other residents.<sup>35</sup> Compared with HACA, most of the surveyed properties include more stringent lookback periods for all three categories: drug-related charges (see Appendix 1); violent charges (see Appendix 2); and charges that pose a threat to the health, safety, and welfare of other residents (see Appendix 3). Overall, the lookback periods for each offense varied greatly, indicating how subjective assigning lookback periods appears to be. For example, whereas some properties list multiple lookback periods for offenses corresponding to offense levels (felonies, misdemeanors, arrests, etc.), HACA identifies one lookback period for each offense. (This report lists only a property's harshest lookback period in Appendices 1-3 to compare to HACA. Consequently, some properties may have less restrictive lookback periods for some offenses.)

#### ➤ ***Drug-Related Criminal Activity***

Many properties do not specify drug-related criminal activities that can result in denial. Compared with HACA's more tolerant lookback periods for convictions under the "drug-related" category (four years for manufacturing or distributing and six months for the illegal use or possession), many properties have a low-tolerance approach. Five properties impose a lifetime ban on drug-related activities, with another 21 imposing a 10-year ban. In addition to the offenses HACA screens, surveyed properties add more offenses, adding additional barriers for applicants who qualify for affordable housing and are interested in properties not managed by HACA.

➤ ***Violent Criminal Activity***

Several violent criminal activities not explicitly screened for through HACA’s HCV Program are listed on the properties’ screening criteria. The majority of properties that listed charges prohibited by the HCV program (i.e. capital murder/manslaughter, arson, kidnapping, rape, sexual assault, and registered sex offender requirements) align with HACA’s standards of imposing a lifetime ban. However, many properties are much harsher on applicants for crimes against person, assaults, stalking, crimes against property, and weapons offenses. While HACA’s lookback period is four years for each of these offenses, many properties look much farther back, with most applying a 10-year lookback period or a lifetime ban.

➤ ***Criminal Activity that Poses a Threat to the Health, Safety, and Welfare of Other Residents***

Many properties list more nuanced charges that they believe pose threats to the health, safety, and welfare of other residents. While properties consider all of the charges also screened by HACA, two offense categories (burglary or theft of property and sex-related offenses) are more frequently mentioned. For burglary or theft-related charges, HACA looks back four years, but most properties look further back. Thirteen properties apply a 10-year ban, with 10 automatically denying burglary and theft charges. Notably, 41 of the 56 properties that screen sex-related offenses aligned with HACA’s lifetime ban requirement. Of the remaining 15 properties, eight apply a 10-year ban for sex-related offenses, and seven do not specify a length of time.

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***Unclear Triggers for Lookback Periods***

Most properties do not list the event that triggers the denial, and the few that do use the conviction date as a trigger rather than the date when the applicant engaged in the criminal activity.

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In addition, most of the admissions policies do not indicate which of the following events must occur within the lookback period to trigger the denial (the so-called “trigger event”): the criminal act itself, the applicant’s arrest, the applicant’s conviction, or the applicant’s release from incarceration or other correctional supervision. Only 17 properties indicate a trigger event. Four properties use the conviction date as the trigger event, 11 use the date of sentence completion, and two use the date the applicant completes his or her jail/prison time or parole/probation time. The Shriver Center report recommends using the date when the applicant engaged in the criminal activity as a trigger event.<sup>36</sup>

***Failure to Consider Mitigating Circumstances***

Similar to broad bans on criminal activity in housing, the underuse of mitigating circumstances disqualifies individuals who can be good tenants. The lack of consideration of the time, nature, and extent of the applicant’s past conduct prevents many people from obtaining housing, especially those who may have engaged in supportive services, including rehabilitative treatment. A clear process for bringing mitigating circumstances forward, examples of what this looks like, and a process for

offering some applicants second chances would all enhance organizations' ability to screen for individuals who have demonstrated the ability to be good tenants, especially those who would otherwise have been denied.

One third of the surveyed properties (25 out of 80) outline the denials and appeals process for applicants in the screening criteria. However, only 15 properties allow appeals. Some properties that use third-party companies to manage their tenant screening outline the appeals process only in the applicant's denial letter, not in the screening criteria.

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### ***Failure to Consider Mitigating Circumstances***

Only a third of the surveyed properties (25 out of 80) outline a denial and appeals process for applicants in the screening criteria. Of those 25 properties, only 15 allow appeals.

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An additional finding relates to third-party screening companies. Technological advances have offered private companies the ability to provide housing providers with instant results from criminal background checks. As the real estate industry has grown, property management firms increasingly rely on these services. These results have created an "unprecedented stigmatization" of applicants with criminal backgrounds as their histories are used at the very beginning of a screening process leaving them little opportunity to explain their convictions or efforts at rehabilitation.<sup>37</sup> In addition, the services that these companies offer have been found to have numerous errors and facilitate the use of arrest records or expunged convictions to bar someone from housing. These practices offer applicants little means to correct these mistakes, with companies simply providing a toll free number to contact instead of being able to interact directly with a housing provider.<sup>38</sup>

Although many, if not all, of the properties contacted use a third-party vendor to screen applicants, only 29 of the 80 properties clearly notify the applicant of their use of a third-party company in the tenant screening process. Furthermore, only half of those 29 properties (14) name the third-party vendor used, allowing the applicant to contact the company with further questions on the criteria prior to applying. For the remaining 15 properties, the tenant selection criteria states that the applicant will be provided the third party's contact information only after being denied tenancy. Requiring applicants to apply before learning more about the criminal screening criteria not only serves to deter households with criminal backgrounds, but also allows

## **CHALLENGES WITH THIRD-PARTY SCREENING COMPANIES**

The Roundtable experienced a number of challenges when contacting third-party companies that conduct background screenings. In a few cases, the customer service representatives refused to provide the criminal criteria used by the property; instead, they referred volunteers back to the property, assuring them that the property would be able to provide this information.

Following this advice, volunteers spoke with the property manager and were again informed that the property did not have screening criteria; the third-party company did. A few customer service representatives at the third-party companies verbally explained the criminal criteria but refused to provide a copy in writing.

properties to collect application fees from rejected applicants who may be low-income and with limited housing options.

### Equating Arrests with Convictions

Using arrests to deny housing is common practice in screening done by a wide variety of affordable housing providers.<sup>39</sup> One third of U.S. felony arrests, however, do not result in conviction, according to a U.S. Department of Justice study of the 75 largest U.S. counties.<sup>40</sup> Even though arrests do not constitute evidence of criminal activity, this information often is included in routine background screenings. Because arrests disparately impact racial minorities in this country such practices may have a disparate impact on access to housing for protected classes.<sup>41</sup> Roughly a quarter of the properties surveyed (18 out of 80) consider an applicant's arrest history as evidence (though not necessarily proof) of criminal activity.

Despite HUD's recent guidance warning against the use of arrest records as a basis for denial, HACA lists arrest records as part of its background screening, setting a precedent for other properties in Travis County. HACA weighs convictions more heavily than arrests, however.



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Some properties inform applicants of their use of arrest records as evidence for unspecified criminal activities:

*Depending on the severity of the offense, an arrest record may be considered sufficient evidence of prohibited criminal activity for a denial of housing.*

Others list specific charges that can bar the applicant from housing if the applicant has an arrest record for that charge:

- *Applications may also be rejected upon discovery of arrests for any assault, felony, sex-related crime, arson, or criminal violation involving the sale or manufacture of illegal drugs that was resolved by conviction, court-ordered community supervision, plea of nolo contendere, or pretrial diversion.*
- *Applicants who have been charged, detained, or arrested for any type of felony offense or any level offense involving a sex crime, assault, weapons or drugs that has not yet been resolved or that was resolved by conviction, probation, deferred adjudication, court ordered community supervision, or pre-trial diversion will not be accepted.*

- *If you have been arrested, convicted or received deferred adjudication for any felony your application will be automatically denied.*

The type of evidence used to determine eligibility varies between properties.

### Overbroad Categories of Criminal Activity

HUD expressly denies housing in only two situations: production of methamphetamines and sex offenses requiring lifetime registry. Many housing providers, however, go much further in restricting housing beyond the types of criminal activity outlined by HUD.<sup>42</sup> When applied too broadly, these policies eliminate applicants with criminal histories that play no role in their ability to be good tenants and make it hard to discern what the property is looking for in the screening process.<sup>43</sup> Moreover, as previously noted, blanket bans always have the potential to disparately impact protected classes.<sup>44</sup>

Nearly half of the properties surveyed (39 of 80) mention bans on felonies without distinguishing which felonies would be most reflective of the applicant's inability to be a good tenant. Lookback periods vary from seven years to lifetime bans for felonies, with most properties (20, 54%) applying lifetime bans and 14 (38%) applying 10-year bans for felonies.

After blanket bans on all criminal activity, perhaps the second broadest offense category is "unclassified offenses." Twenty properties list "unclassified offenses" in their screening criteria, but only two criteria provide specific examples. Having such an overbroad category enables properties to deny applicants based on a variety of unrelated offenses, and the potential to so classify offenses is virtually unlimited.

Nearly half of the properties (37) simply list drug-related activities (see Appendix 1), as opposed to differentiating between drug possession, distribution, manufacturing, etc. HACA includes 13 violent offenses under its criminal screening guidelines and 7 offenses under criminal activities that pose a threat to the health, safety, and welfare of other residents. In contrast, the surveyed properties include 134 unique offenses. The properties resort to vague and overbroad language to justify the new offenses, relying on statements such as "we reserve the right to determine whether an act qualifies as violent for the purposes of screening our applicants;" and "all other offenses not specified...will be looked at on an individual basis and will be assessed to determine if that particular offense threatens the health, safety, and rights to peaceful enjoyment of the property by other residents and their guests or health and safety of the owner, employees, contractors, subcontractors, or agents of the owner." Such statements make it unclear how many offenses, beyond those listed, will be considered. It also is unclear which offenses would be considered under each of HUD's three categories, since the properties making those statements did not explain the criteria by which offenses are categorized. Similarly, it is unclear whether, for example, an offense considered violent by one property will also be considered a threat to health, safety, and welfare of other residents by another.

Other overbroad offenses include crimes against society (1), crimes related to public justice (3), anti-social offenses (1), morals-related crimes (1), and financial crimes (1). Three properties apply blanket bans on all criminal activity, with two of those properties applying time-limited blanket bans on all criminal activity in the past five years.

One of the most striking findings from this survey is the category “unclassified offenses,” that generally is left undefined. Example offenses include hunting/fishing violations (five-year ban for misdemeanors); horse racing (10-year ban for felonies, seven for gross misdemeanors, three for misdemeanors); and eavesdropping (10-year ban for felonies, seven for gross misdemeanors, three for misdemeanors). The Work Group obtained only two tenant selection plans with specific examples of “unclassified offenses.” However, the fact that 20 properties list “unclassified offenses” as a general ground for denial suggests that other properties may consider similar offenses. This highlights the property owners’ broad discretion to classify any offense as one posing a threat to the health, safety, and welfare of other residents.

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### ***Confusing and Circular Language***

Some tenant selection criteria are poorly written and include nonsensical and circular sentences such as the following: *“Applicants or occupants that have a history involving offenses that are not classified on the applicable screening materials will be considered to be offenses requiring rejection unless otherwise shown to be offenses that do not require rejection.”*

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## ***Leading by Example: Building Partnerships and Strengthening Processes***

The community initiatives and local partners identified below provide a strong foundation for addressing housing barriers for persons with criminal backgrounds, and the innovative reforms recently undertaken by the Housing Authority of New Orleans to increase access to affordable housing for this population serves as a case study for strengthening local processes.

### **Building Partnerships**

#### **➤ *City of Austin and Travis County Fair Housing Action Plans***

The City of Austin and Travis County have identified barriers for persons with criminal backgrounds as part of their obligation to affirmatively further fair housing. The City of Austin’s recent Assessment of Fair Housing and corresponding Fair Housing Action Plan recognizes the need to focus on this topic, with a goal to “pursue implementation of reasonable lookback periods for criminal backgrounds in rental criteria for developments with City of Austin funds to ensure that the lookback periods don’t screen out more people than necessary” and the proposed outcome to make “administrative changes to implement reasonable lookback periods for criminal backgrounds in rental criteria in developments with City of Austin funds.”<sup>45</sup> While Travis County’s Fair Housing Plan does not specifically mention criminal backgrounds, it highlights the need to maintain countywide efforts to identify, understand, and eliminate discrimination including the specific need to “pass a resolution...that serves as a government-wide statement of intention to promote fair housing and prohibit discrimination.”<sup>46</sup>

➤ ***HousingWorks Austin***

HousingWorks Austin aims to increase the supply of affordable housing in Austin through research, education, and advocacy. In a 2014 report entitled “Housing the Hardest to Serve: Using Permanent Supportive Housing to Address Chronic Homelessness in the City of Austin,” HousingWorks offers a set of recommendations to develop consistent and reasonable policies regarding tenant criminal histories, including the following: “As part of the [Rental Housing Development Assistance] application, the city should provide a sample policy regarding tenant criminal histories. [HACA] utilizes a policy that incorporates reasonable “lookback” regarding criminal history.... Recipients of city funding should be required to have a reasonable look-back period for both misdemeanors and felonies. There should also be an appeals process built in to the admissions policy.”<sup>47</sup>

➤ ***Mayors Challenge to End Veteran Homelessness***

In Travis County, many households experiencing homelessness typically face housing barriers due to a criminal background, and the Ending Community Homelessness Coalition (ECHO) has been a key partner addressing the intersection of homelessness and incarceration. In 2015, ECHO was able to build partnerships with five multifamily properties in Austin, negotiating lower criminal screening barriers for veteran households experiencing homelessness. This would not have been possible without leverage ECHO gained from partnering with the City of Austin on the Mayors Challenge to End Veteran Homelessness. Participating in the Mayors Challenge granted homeless service providers access to resources that helped reduce the greatest barrier veterans experiencing homelessness faced - access to housing.

From its work tracking criminal barrier data, ECHO has found that, on average, 82 percent of the veteran households it serves have some criminal barrier. In 2012, before the negotiated partnerships with the five multifamily properties in Austin, it took 238 days to house a veteran experiencing homelessness; as of 2016, it takes less than 90 days.<sup>48</sup> Many factors have helped lower the number of days to housing, but much of the success is due to reduced lookback periods.

➤ ***Travis County Affordable Housing Policy Committee***

In 2015, the Travis County Commissioners Court created the Affordable Housing Policy Committee, a committee of internal county departments involved in housing planning to assess the county’s fair housing obligations and identify strategies and recommendations for the county to undertake to further fair housing goals, including the development of an Affordable Housing Plan and related policies. The committee’s values statement, as approved by the Commissioners Court, includes a value dedicated to “lower(ing) barriers for people with criminal histories to re-enter society and successfully obtain housing and employment to create a better future.”<sup>49</sup>

➤ ***HB1510: Landlord Liability***

Passed in the 84<sup>th</sup> legislative session, House Bill 1510 went into effect on January 1, 2016. The law protects property owners, leasing agents, and real estate agents by limiting the risk of liability they may face when they lease property to individuals with a criminal record.<sup>50</sup> The law does not require anyone to lease property to someone with a criminal record, but does encourages looking beyond the mere fact of a criminal record when making that determination. Ultimately, HB 1510 can improve public safety by increasing the likelihood that individuals with a criminal record remain stable and law-abiding.

## Strengthening Processes

In March 2016, the Housing Authority of New Orleans (HANO) Board of Commissioners adopted revised criminal background procedures.<sup>51</sup> The new procedures offer prospective tenants with criminal histories significantly greater protection and address many of the key barriers discussed above. Among other changes, the new procedures do away with absolute presumptions regarding eligibility (apart from HUD's two mandated categories) and every HANO applicant receives an individualized review, including notice and opportunity to submit mitigating and other evidence in support of their application.

Notably, the new procedures apply to all HANO properties, including HANO-managed public housing sites, third-party managed public housing sites, and admission to the HCV Program. Landlords in the HCV Program continue to oversee their own review process for each individual voucher holder, but this review may not violate the new procedures. Indeed, the new system provides for a robust monitoring of screening outcomes, requiring landlords to provide HANO with monthly reports of denials. HANO will use this information to produce twice-yearly summaries to allow stakeholders to track compliance with the procedures and identify possible implementation gaps. Other key provisions include:

- Clearly identified lookback triggers;
- Restriction against consideration of expunged offenses and limited consideration of arrests only in situations in which charges remain pending;
- Consideration of misdemeanors only if they may “reasonably impact” community safety;
- A grid laying out specific guidelines for the lookback periods of specific offenses;
- A requirement that all landlords make their screening criteria publicly accessible on-line, promoting greater transparency; and
- A newly created applicant review panel with detailed procedures outlining the use of individualized assessments and the amount and scope of additional information a person may submit to the panel.

HANO's revised eligibility and background screening criteria provides a powerful and timely example for other jurisdictions.

## Moving Forward

The Roundtable is eager to serve as a resource for technical assistance and to convene continued conversation to discuss the findings in this report and to develop strategies that enhance access to housing opportunities for persons with criminal backgrounds. Based on the results of our research, the Roundtable offers the following recommended approach and actions.

### Recommended Approach

- **Partnerships.** The Roundtable is committed to convening *public and private housing industry partners* to find common sense solutions to enhance housing access for persons with criminal backgrounds. Because much of the housing available to these individuals is not subsidized, it is imperative to engage all property owners on the new fair housing guidance and to support more holistic screening processes.
- **Education.** Some property management representatives may not fully understand their legal obligations under the Fair Housing Act. Developing policies and practices that ensure *transparency* and align with recent HUD guidance in terms of arrest records and fair housing is critical and should be inclusive of third-party companies that conduct background checks.
- **Accountability.** Properties must be held accountable for ensuring they have legally adequate policies and procedures to meet HUD requirements. Entities administering HUD funding must *strengthen scoring criteria and monitoring processes* to ensure sub-recipient compliance with affirmatively furthering fair housing obligations.

### PRACTICES THAT HELP ENSURE FAIR HOUSING RIGHTS FOR PERSONS WITH CRIMINAL BACKGROUNDS

- Achieve consistency across third-party property managers.
- Shorten look-back periods.
- Consider the nature and severity of the crime, as well as how recently it occurred, when designing criminal screening policies.
- Allow for individualized review of all applicants with records rather than automatic denial.
- Conduct quality checks of criminal background reports received.
- Coordinate criminal history screening with local Public Housing Authorities.
- Run a criminal background check last, and only after candidates have passed financial and other screening processes.

## Recommended Actions

In addition to inviting City, County, and local housing policy leaders, elected officials, housing industry professionals, and the wider community to review findings, discuss recommendations, and explore additional sources of funding to implement reforms, the Roundtable urges stakeholders to consider some or all of the following specific reforms:

- Include clearly defined and reasonable criminal history lookback periods for both misdemeanors and felonies, along with an appeals process for admission.
- Require properties receiving funding or support through HUD-funded entities post tenant selection criteria online and have it readily available in the property's office.
- Create a safe harbor for landlords who receive city or county funding, including bond funding, and who accept Housing Choice Vouchers and rely on tenant screenings performed by HACA or the Housing Authority of Travis County.
- Increase funding for fair housing testing of landlords with respect to criminal selection policies to determine if they are violating the Fair Housing Act through either disparate treatment or impact.
- Create sample policies incorporating practices listed on page 18 of this report to ensure fair housing rights for persons with criminal histories and encourage uniform screening.

With a focus on building partnerships and encouraging open community dialogue, the Roundtable will continue to prioritize this conversation to better protect fair housing rights and overcome barriers to housing for persons with criminal backgrounds in Austin and Travis County.

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*At this critical juncture – this moment of rare bipartisan agreement – it is more important than ever that we harness this momentum and continue to push forward, so that every American returning from prison can find dignified work and adequate shelter; so that they can receive fair treatment and full opportunity; so that they return to a society that values them as fellow citizens; so that they can, in fact, truly return home.”*

*—Attorney General Loretta Lynch, 2016*

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## Appendix 1: Lookback Periods for Drug and Alcohol Related Offenses Included in Surveyed Properties' Criminal Background Policies

The table below includes only those offenses specifically identified in the policies provided by the surveyed properties. Because many of the policies did not identify specific offenses, the totals in the last column (Total # Properties Mention Ban) do not sum to the total number of properties surveyed (80). The asterisks denote HACA's lookback period.<sup>i</sup>

Offenses/Patterns	# of Properties with the Following Lookback Periods (in years)										Total # Properties Mention Ban
	Unspecified Length	<1	1	3	4	7	10	15	20	Lifetime Ban	
<b>Criteria also included in HACA's Housing Choice Voucher Program</b>											
Manufacturing or distributing controlled substances	1			2	*	1	2	1	1	14	22
Manufacture Methamphetamines										11*	11
Illegal use or possession of a controlled substance		*	1			1	1		1	2	6
Pattern of alcohol abuse	2				*	1				2	5
<b>Additional offenses added by surveyed properties</b>											
Drug-related	6			1		3	21		1	5	37
Drug paraphernalia							1			2	3
Abuse of alcohol	3						3			2	8
Drug pattern	2									3	5

<sup>i</sup> Compared to HACA's Housing Choice Voucher (HCV) Program requirements, many of the properties surveyed impose more stringent lookback periods. The tables in Appendix 1, 2 and 3 indicate which offenses are listed in HACA's HCV Program criteria (as denoted by asterisks), and a separate section listing a selection of additional offenses considered by properties. As some properties list multiple lookback periods for offenses corresponding to offense levels (felonies, misdemeanors, arrests, etc.), whereas HACA only lists a standard lookback period for the offense, the Roundtable only lists the property's harshest lookback period to compare to HACA. Consequently, some properties may have less restrictive lookback periods for some offenses.

## Appendix 2: Lookback Periods for Violent Criminal Activities Included in Surveyed Properties' Criminal Background Policies

The table below includes only those offenses specifically identified in the policies provided by the surveyed properties. Because many of the policies did not identify specific offenses, the totals in the last column (Total # Properties Mention Ban) do not sum to the total number of properties surveyed (80). The asterisks denote HACA's lookback period.

Offenses/Patterns	# of Properties with the Following Lookback								Total # Properties Mention Ban	
	Unspecified Length	3	4	5	7	10	15	20		Lifetime Ban
<b>Criteria also Included in HACA's Housing Choice Voucher Program</b>										
<b>Sex-related</b>										
Rape							1		10*	11
Sexual assault							1		8*	9
Registered Sex Offender	1					8			23*	32
<b>Crime against person</b>										
Crime against person	2		*	2	3	8			14	29
Assault	4		*	2	4				12	22
Capital Murder, Murder,							1	1	20*	22
Stalking			*	2		1			9	12
Kidnapping						1	1		18*	20
Child molestation									2*	2
<b>Crime against property</b>										
Crime against property	4		*	1	3	8		1	2	19
Arson	1							2	19*	22
Weapons	4		*	2	4			3	3	16
Pattern of organized			*							0
<b>A Selection of Offenses Added by Surveyed Properties</b>										
Violent	6				4	1			24	35
Animal-related	3			1		9				13
Destruction to property				2		13		1	2	18
<b>Crime against person</b>										
(Aggravated) robbery					4				1	5
Battery									10	10
Homicide	1							1	1	3
Injury to child									12	12

<sup>ii</sup> According to HACA, a pattern consists of three or more incidences, with a minimum of one incident occurring within the past three years.

### ***Appendix 3: Lookback Periods for Criminal Activities that Pose a Threat to the Health, Safety, and Welfare of Other Residents Included in Surveyed Properties' Criminal Background Policies***

The table below includes only those offenses specifically identified in the policies provided by the surveyed properties. Because many of the policies did not identify specific offenses, the totals in the last column (Total # Properties Mention Ban) do not sum to the total number of properties surveyed (80). The asterisks denote HACA's lookback period.

Offenses/Patterns	# of Properties with the Following Lookback Periods							Total # Properties Mention Ban
	Unspecified Length	3	4	7	10	20	Lifetime Ban	
<b>Criteria also Included in HACA's Housing Choice Voucher Program</b>								
Burglary or theft of property	1		*	4	13	2	10	<b>30</b>
Pattern of theft or fraud <sup>iii</sup>		1*					1	<b>2</b>
Pattern of fraud against governmental entity <sup>iv</sup>		*					1	<b>1</b>
Sex-related	7				8		41*	<b>56</b>
Pattern of prostitution <sup>v</sup>		*					1	<b>1</b>
Incest					1		1*	<b>2</b>
Gross lewdness							1*	<b>1</b>
<b>A Selection of Offenses Added by Surveyed Properties</b>								
Harassment				4	1			<b>5</b>
Fraud					2	1	10	<b>13</b>
Prostitution-related				3	9	1		<b>13</b>
Terrorist-related				4	9		1	<b>14</b>
Treason	3				1		9	<b>13</b>
Unclassified offenses	18			1	1			<b>20</b>

<sup>iii</sup> According to HACA, a pattern consists of three or more incidences, with a minimum of one incident occurring within the past three years.

<sup>iv</sup> Ibid.

<sup>v</sup> Ibid.

- <sup>1</sup> Austin/Travis County Reentry Report Card. Austin/Travis County Reentry Roundtable. September 2014. [www.reentryroundtable.net](http://www.reentryroundtable.net).
- <sup>2</sup> McGinty, Jo Craven. *How Many Americans Have a Police Record? Probably More Than You Think*. Wall Street Journal. August 7, 2015. [www.wsj.com](http://www.wsj.com).
- <sup>3</sup> Tran-Leung, Marie Claire. *When Discretion Means Denial: A National Perspective on Criminal Records Barriers to Federally Subsidized Housing*. Sargent Shriver National Center on Poverty Law, Feb. 2015.
- <sup>4</sup> The remaining 27 properties contacted did not provide information. One property was closed, four were social service facilities with tenant referral processes that are not available to the public, and 22 properties did not respond.
- <sup>5</sup> Tran-Leung, Marie Claire. *When Discretion Means Denial* (2015).
- <sup>6</sup> Housing Choice Voucher Program: Administrative Plan." Housing Authority of the City of Austin. Dec 2015. pp. 67 - 69.
- <sup>7</sup> Austin/Travis County Reentry Report Card.
- <sup>8</sup> McGinty, Jo Craven. *How Many Americans Have a Police Record? Probably More Than You Think*. Wall Street Journal. August 7, 2015. [www.wsj.com](http://www.wsj.com).
- <sup>9</sup> FBI Criminal Justice Information Services Division, *Crime in the United States, 2013*, tbl.43A, [www.fbi.gov](http://www.fbi.gov), Fall 2014.
- <sup>10</sup> E. Ann Carson, Bureau of Justice Statistics, U.S. Dep't of Justice, *Prisoners in 2014* at tbl. 10, [www.bjs.gov](http://www.bjs.gov), Sept. 2015.
- <sup>11</sup> Blumstein, Alfred. *Race and Criminal Justice*. America Becoming: Racial Trends and their Consequences. Vol. II, p. 21. [www.nap.edu/read/9719/chapter/3](http://www.nap.edu/read/9719/chapter/3).
- <sup>12</sup> *CAN Dashboard Report*, 2016. Community Advancement Network. [www.cancommunitydashboard.org](http://www.cancommunitydashboard.org).
- <sup>13</sup> *Incarceration Trends Project*. Vera Institute. [www.vera.org/projects/incarceration-trends](http://www.vera.org/projects/incarceration-trends).
- <sup>14</sup> Castro, Julian, *Criminal Justice Reform Includes Housing*. [medium.com/@SecretaryCastro](http://medium.com/@SecretaryCastro).
- <sup>15</sup> Fair Housing Act, 42 U.S.C. § 3601 *et seq.*
- <sup>16</sup> Austin, Texas. Code of Ordinances, Title V: Civil Rights, Ch. 5-1: Housing Discrimination. [www.municode.com/library/tx/austin/codes/code\\_of\\_ordinances?nodeId=TIT5CIRI](http://www.municode.com/library/tx/austin/codes/code_of_ordinances?nodeId=TIT5CIRI).
- <sup>17</sup> Texas Dept. of Hous. and Cmty. Affairs v. Inclusive Communities Project, Inc., \_ U.S.\_, 135 S.Ct. 2507 (2015). While the Supreme Court's disparate impact ruling remains the law of the land, the U.S. District Court for the Northern District of Texas ultimately rejected ICP's disparate impact claim on the ground that ICP failed to show a prima facie case of discrimination. 2016 WL4494322 (N.D. Tex.) Aug. 26, 2016. ICP has filed a Motion for New Trial, which remains pending. For more information, see [www.inclusivecommunities.net/documents/9-23-16-ICPvTDHCApress\\_release\\_rev.pdf](http://www.inclusivecommunities.net/documents/9-23-16-ICPvTDHCApress_release_rev.pdf).
- <sup>18</sup> Ibid. For a more complete discussion of disparate impact discrimination and the Fair Housing Act, visit the National Fair Housing Alliance website, [www.nationalfairhousing.org/PublicPolicy/DisparateImpact](http://www.nationalfairhousing.org/PublicPolicy/DisparateImpact).
- <sup>19</sup> Texas Dept. of Hous. and Cmty. Affairs v. Inclusive Communities Project, Inc., \_ U.S.\_, 135 S.Ct. 2507 (2015).
- <sup>20</sup> Castro, Julian, *Criminal Justice Reform Includes Housing*. [medium.com/@SecretaryCastro/criminal-justice-reform-includes-housing-fd29940fc598#.c1c2eu868](http://medium.com/@SecretaryCastro/criminal-justice-reform-includes-housing-fd29940fc598#.c1c2eu868).
- <sup>21</sup> Letter from Shaun Donovan, Secretary, HUD, to Public Housing Authority Executive Directors (June 17, 2011). [www.usich.gov/resources/uploads/asset\\_library/Rentry\\_letter\\_from\\_Donovan\\_to\\_PHAs\\_6-17-11.pdf](http://www.usich.gov/resources/uploads/asset_library/Rentry_letter_from_Donovan_to_PHAs_6-17-11.pdf).
- <sup>22</sup> National Housing Law Project. [www.nhlp.org/node/1480](http://www.nhlp.org/node/1480).
- <sup>23</sup> Ibid.
- <sup>24</sup> HUD Guidance. *Notice PIH 2015-19/H 2015/10: Guidance for Public Housing Agencies (PHAs) and Owners of Federally Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions*. Nov. 2 2015. [portal.hud.gov](http://portal.hud.gov).
- <sup>25</sup> HUD Guidance. *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*. April 4, 2016. [portal.hud.gov](http://portal.hud.gov).
- <sup>26</sup> HUD Final Rule. 136th ed. Vol. 80. Washington D.C.: U.S. Government Office, 2015. 24 Jan. 2016. [www.gpo.gov/fdsys/pkg/FR-2015-07-16/pdf/2015-17032.pdf](http://www.gpo.gov/fdsys/pkg/FR-2015-07-16/pdf/2015-17032.pdf).
- <sup>27</sup> Tran-Leung, Marie Claire. *When Discretion Means Denial* (2015).
- <sup>28</sup> City of Austin Data Portal. "Affordable Housing Inventory." [www.data.austintexas.gov](http://www.data.austintexas.gov).

<sup>29</sup> The remaining 27 properties contacted did not provide information. One property was closed, four were social service facilities with tenant referral processes that are not available to the public, and 22 properties did not respond.

<sup>30</sup> Texas Property Code, Sec. 92.3515 (Notice of Eligibility Requirements). [law.onecle.com/texas/property/92.3515.html](http://law.onecle.com/texas/property/92.3515.html).

<sup>31</sup> Texas Department of Housing and Community Affairs, Uniform Multifamily Rules Section 10.610, Tenant Selection Criteria. [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us).

<sup>32</sup> Donovan Letter to PHAs; Letter from Shaun Donovan, Secretary, HUD.

<sup>33</sup> Tran-Leung, Marie Claire. *When Discretion Means Denial* (2015).

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Oyama, Rebecca. *Do Not (Re)Enter: The Rise of Criminal Background Tenant Screening as a Violation of the Fair Housing Act*. Michigan Journal of Race and Law 15.1 (2010): 187.

<sup>38</sup> Yu, Persis S. and Sharon M. Dietrich. *Broken Records: How Errors by Criminal Background Checking Companies Harm Workers and Businesses*. National Consumer Law Center. April 2012.

<sup>39</sup> Tran-Leung, Marie Claire. *When Discretion Means Denial* (2015).

<sup>40</sup> Reaves, Brian A. Felony Defendants in Large Urban Counties, 2009- Statistical Tables. Publication no. NCJ 243777. U.S. Department of Justice Office of Justice Programs, Dec. 2013. [www.bjs.gov](http://www.bjs.gov).

<sup>41</sup> Tran-Leung, Marie Claire. *When Discretion Means Denial* (2015).

<sup>42</sup> National Housing Law Project. [nhlp.org/node/1480](http://nhlp.org/node/1480).

<sup>43</sup> Tran-Leung, Marie Claire. *When Discretion Means Denial* (2015).

<sup>44</sup> Ibid.

<sup>45</sup> City of Austin Fair Housing Action Plan, May 2015. [www.austintexas.gov](http://www.austintexas.gov).

<sup>46</sup> Travis County Fair Housing Action Plan, 2014-2018. [www.traviscountytx.gov](http://www.traviscountytx.gov).

<sup>47</sup> *Housing the Hardest to Serve: Using Permanent Supportive Housing to Address Chronic Homelessness in the City of Austin*. HousingWorks Austin, commissioned by the City of Austin Neighborhood and Community Development Office. 2014.

<sup>48</sup> *Homelessness in Austin: Current Needs & Gaps Report*. Ending Community Homelessness Coalition. 2016. [austinecho.org](http://austinecho.org).

<sup>49</sup> *Affordable Housing Policy Committee Values*. Travis County. 2016.

<sup>50</sup> House Bill 1510 Implementation Guide for Renters and Advocates. [www.publicpolicycenter.texasjc.org](http://www.publicpolicycenter.texasjc.org).

<sup>51</sup> *Criminal Background Screening Procedures*. Housing Authority of New Orleans. March 29, 2016. [www.hano.org](http://www.hano.org).

