

Connecticut Housing Finance Authority  
Use of Criminal Records Reference Guide  
1<sup>st</sup> Edition, 2017

*The Connecticut Housing Finance Authority (CHFA) provides the following as an overview regarding the use of criminal records in conjunction with tenant applicant screening. There can be various circumstances or program specific definitions, exceptions or mandates regarding the use of criminal records not covered or intended to be covered here. This material is provided solely as a reference; it should not be used or construed as legal advice or as a legal document, a legal opinion, or an official interpretation regarding the use of criminal records. Property owners and property managers should seek independent guidance from their own legal counsel regarding the requirements for and restrictions on the use of criminal records. CHFA assumes no liability or responsibility for any use of this document beyond its intended purpose as a general reference tool only. Users are cautioned to seek qualified assistance in specifically applying or interpreting the use of criminal records to their own circumstances.*

### **Part 1: Overview**

Housing providers use criminal records as a resource during a comprehensive tenant applicant screening process. It is essential that housing providers which use these criminal records do so in a manner consistent with established law, regulations, and policies to afford qualified applicants an opportunity to obtain suitable housing. CHFA offers this resource to assist in understanding this topic.

### **Part 2: Types of Criminal Records**

#### Arrest Records

- An arrest record simply means that probable cause may have existed to subject someone to arrest and the judicial process.
- An arrest record, in and of itself, NEVER means that someone is guilty of what the person was accused of.
- An arrest record, regardless of the number of arrests, should never be used as the sole determining factor in denying an application.
- The terms “arrest” and “conviction” are NOT interchangeable and mean completely different things.
- In making a determination regarding suitability, the “preponderance of the evidence” standard is used. Simply put, this means that the evidence suggests the conduct more likely than not did – or did not – occur.

# Connecticut Housing Finance Authority

## Contents

- [1. Overview](#)
- [2. Types of Criminal Records](#)
- [3. General Guidance](#)
- [4. Discrimination Claims](#)
- [5. HUD Regulations](#)
- [6. Additional Resources](#)

- If an applicant is arrested during the admissions screening process, housing providers may use available information and evidence during the screening process.

## Conviction Records

- A conviction record is evidence that a person was in fact responsible for a crime.
- A person may be convicted for a crime different than the crime for which they were arrested or may be convicted for a lesser number of crimes than those for which they were arrested. It is important not to assume that the arrest charges and conviction charges will be the same.
- Official documents and information regarding arrests and convictions may be obtained from, among other sources:
  - Through the State of Connecticut 'Judicial' portal at [www.ct.gov](http://www.ct.gov)
  - Through submission of a Connecticut State Police (CSP) 'Criminal History Record Request Form' (fee involved – form available at [www.ct.gov/despp](http://www.ct.gov/despp))
  - Through the Sex Offender Registry ("SOR") available at [www.ct.gov/despp](http://www.ct.gov/despp)
  - Through the local law enforcement agency in the municipality in which the applicant lives; a Freedom of Information Act (FOIA) request may be made for any public records pertaining to the applicant/tenants.\*
  - Through police reports and arrest/search warrant affidavits obtained via a FOIA request to the police department or State Police troop having made an arrest.\*
  - Through third-party vendors/background check companies.
  - Through an FOIA request for relevant documents to the Connecticut Superior Court in which criminal proceedings took place.\*
  - Access to records contained in the *National Crime Information Center (NCIC) Interstate Identification Index (III)* may be afforded to Public Housing Agencies (PHA) administering certain federal programs. Access to that information is otherwise restricted and does require the PHA to submit to an application and approval process. Further information detailing this process and the use of information obtained via NCIC is available via HUD Notice PIH 2003-11 (HA) and the *Code of Federal Regulations* at 24 CFR 5.903.

\*The release of information may be affected by the status of judicial proceedings, state law, Freedom of Information Commission rulings, local protocols, or a court order restricting the release of certain information.

If an outside company is used for background checks, the Fair Credit Reporting Act must be complied with. Among other things, before accessing a consumer report for tenant screening, a housing provider must:

1. Only access a report for a current tenant/rental applicant who is applying to rent housing.
2. Get permission from the tenant/rental applicant to obtain consumer reports.

3. Certify to the consumer reporting agency providing the consumer report that the report will only be used for housing purposes.
4. If accessing credit reports for tenant screening, complete a credit access approval process with the consumer reporting agency.

If a housing provider takes any action that is considered unfavorable towards the tenant/rental applicant based on information found in a consumer report, it is considered an “adverse action.” If a housing provider takes an adverse action it must notify the applicant or tenant with an Adverse Action Notice. Common examples of adverse action may include:

- Denying the application;
- Requiring a co-signer on the lease;
- Requiring a deposit that would not be required for another applicant;
- Requiring a larger deposit than might be required for another applicant; and
- Raising the rent to a higher amount than for another applicant.

An adverse action notice informs people about their rights to see information being reported about them and to correct inaccurate information. The notice must include:

- The name, address, and phone number of the consumer reporting agency that supplied the report;
- A statement that the consumer reporting agency that supplied the report did not make the decision to take the unfavorable action and cannot give specific reasons for it; and
- A notice of the person’s right to dispute the accuracy or completeness of any information the consumer reporting agency furnished, and to get a free report from the agency if the person asks for it within 60 days.

The adverse action notice is required even if information in the consumer report was not the primary reason for the decision. While oral adverse action notices are allowed, written notices are a better practice as they provide proof of FCRA compliance.

A housing provider must securely dispose of any consumer report and the information it gathered when the consumer report is no longer being used. Secure disposal can include burning, pulverizing, or shredding paper documents and disposing of electronic information so that it can’t be read or reconstructed.

### **Part 3: General Guidance**

- Information obtained through subscriber based third party vendors may be limited in scope. Caution should be exercised here as housing providers should have available sufficient information, verified as accurate, upon which an informed decision can be made and supported upon a legal challenge.
- The use of media reports as evidence to support a decision is not recommended.

- Conviction or criminal record “lookback periods” and the weight accorded to those records may be based on reasonableness and common sense.
  - A “lookback period” is that period of time preceding an application that a housing provider uses in reviewing an applicant’s conviction/criminal record(s).
  - There is currently no regulation at the Federal or State level which specifically addresses the defensible length of a lookback period.
    - In practice, a recent conviction for a minor offense not involving harm or risk to another should be viewed differently than a recent conviction involving bodily harm to another person. Similarly, a conviction for assault ten years prior may be weighted differently than an assault conviction six months prior.
    - Blanket prohibitions on persons having been convicted within a housing provider’s lookback period can be problematic. With the goal of an effective screening process being a determination as to an applicant’s suitability as a tenant, the *crime(s)* for which the person was convicted should be considered. Any denial based on an applicant’s or potential tenant’s previous imprisonment should have a reasonable nexus to that person’s suitability as a tenant.
  - Any conviction(s) used as a basis for denial should be specifically tied to an applicant’s unsuitability as a tenant.
  - The length of time elapsed since the conduct for which the conviction occurred and any rehabilitation undertaken should be considered.
- Tenant Selection Policies should contain clear language detailing requirements for approval as well as specific grounds for application rejection. In other words, a housing provider’s policies should reflect its practices.
  - A good starting point in evaluating requirements for reviewing an application is whether the requirements enable the housing provider to assess whether the applicant appears qualified to meet their obligations as a tenant, i.e., can they fulfill their lease and payment obligations and abide by house rules?
- Vague or Non-specific Prohibitions as a Bar to Approval
  - Requirements for evaluating applications should be specific. Policies that bar applicants using vague, non-specific terminology such as “immoral conduct,” “offensive conduct”, “undesirable conduct”, “moral turpitude”, and the like should be avoided.
- A housing provider considering denial of an application based on a conviction/criminal record should notify the applicant in writing of the proposed denial, the specific reasons on which the denial is based, and should afford the applicant an opportunity to respond to the proposed decision prior to the decision being finalized.
- Applicants may be able to present evidence and information to the housing provider that could cause the housing provider to reconsider a proposed denial.

- The Department of Housing and Urban Development (“HUD”) Occupancy Handbook (which is applicable in certain federal programs) states that rejection notices must be in writing and include the applicant’s right to respond to dispute the rejection. See HUD Handbook 4530.3, REV-1, paragraphs 4-9.
- HUD does not generally require housing providers to adopt or maintain a “one strike” policy regarding termination of assistance or eviction.
- Connecticut General Statutes Section 8-45a provides that a housing authority may establish criteria and consider relevant information of any applicant or proposed occupant pertaining to:
  - Crimes of physical violence to persons or property.
  - Crimes involving the illegal sale, distribution, manufacture or use of a controlled substance.
  - Criminal acts that would adversely affect the health, safety or welfare of other tenants.
  - An applicant’s or proposed tenant’s abuse, or pattern of abuse, of alcohol when such use or pattern of abuse could interfere with the health, safety or right to peaceful enjoyment of the premises by other residents.
  - Required lifetime registration on the Sexual Offender Registry.\*
  - Connecticut General Statutes Section 8-45a also provides that, “[I]n evaluating any such information, the housing authority shall give consideration to the time, nature and extent of the applicant’s or proposed occupant’s conduct and to factors which might indicate a reasonable probability of favorable future conduct such as evidence of rehabilitation and evidence of the willingness of the applicant, the applicant’s family or the proposed occupant to participate in social service or other appropriate counseling programs and the availability of such programs.”

\*This would preclude admission to Federal Subsidized Housing.

#### **Part 4: Discrimination Claims**

Applicants who are denied acceptance might in some cases allege wrongful denial of their application.

- A can person make the claim of unlawful housing discrimination based on the person’s membership in a “protected class.”
  - Under the Federal Fair Housing Act, protected classes are race, color, religion, national origin, sex, disability, and familial status.<sup>1</sup>
  - Under Connecticut’s human rights and opportunities law prohibiting discrimination in housing practices, protected classes include race, creed, color, national origin, sex, familial status, marital status, learning disability, mental or physical disability, ancestry, marital status, age, sexual orientation, gender identity or expression, and lawful source of income.<sup>2</sup>

---

<sup>1</sup> 42 U.S.C § 3601 *et seq.*

<sup>2</sup> Conn. Gen. Stat. § 46a-64c & 46a-81e.

- Discrimination can be either intentional or unintentional.
  - In the context of housing, intentional discrimination occurs when a housing provider denies housing, modifications, or accommodations based upon the requesting party's membership in a protected class.
- Unintentional discrimination can occur when a facially neutral policy (i.e., a policy "applied across the board") is found to cause disparate impact to members of a protected class.

### **Part 5: HUD Regulations**

- HUD regulations require permanent denial of admission or termination of assistance to federally subsidized housing in only two circumstances:
  1. A conviction for producing methamphetamine in federally-assisted housing.
  2. Lifetime registration as a sex offender.
- HUD has also issued the following four documents:
  1. Notice H 2015-10, dated November 2, 2015, *Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions*.
  2. Notice PIH 2015-19, dated November 2, 2015, *Guidance for Public Housing Agencies (PHAs) and Owners of Federally-Assisted Housing on Excluding the Use of Arrest Records in Housing Decisions*. (Public and Indian Housing)
  3. Office of the 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
  4. FAQs for Notice PIH 2015-19/H 2015-10, *FAQs: Excluding the Use of Arrest Records in Housing Decisions (undated)*
    - Housing providers are encouraged to obtain and review these documents. While housing providers are obligated to follow the applicable existing laws and regulations cited in these documents, much of the material is offered as guidance and should not be interpreted or applied as having the force of law or an active regulation. In conjunction with other information, this guidance material can assist a housing provider in constructing best practices models.

### **Part 6: Additional Resources**

- The Connecticut Fair Housing Center may provide additional resource material to assist in constructing local policies at: [www.ctfairhousing.org](http://www.ctfairhousing.org).
- HUD may provide additional resource material to assist in constructing local policies. [www.hud.gov](http://www.hud.gov). CT Department of Housing (DOH) may provide additional resource material to assist in constructing local policies at: [www.ct.gov/doh](http://www.ct.gov/doh).