Public Housing Eligibility for People with Conviction Histories

Niloufer Taber
Jacqueline Altamirano Marin
John Bae
Vera Institute of Justice

The views expressed in this article are those of the authors and do not represent the official positions or policies of the Office of Policy Development and Research, the U.S. Department of Housing and Urban Development, or the U.S. Government.

Abstract

Housing is a basic need for all people, but one that is too often denied for those who have a conviction history because of policies that exclude this population from renting or joining a lease. This study estimates the number of people in Michigan and Oklahoma who are potentially excluded from public housing and who may regain public housing eligibility if public housing authorities (PHAs) change the time a conviction history can be considered for admissions decisions, commonly known as a lookback period. Results show that more than 3.5 percent of all adult Michiganders and 7.6 percent of all adult Oklahomans are potentially excluded from public housing. These percentages are low estimates for both states due to the study's simplified assumptions and the omission of the impact that such rules have on family members of people with a conviction history.

Introduction

Housing is foundational for everyone's health and well-being. Access to housing is a social determinant of health and is used as an intervention to improve health outcomes (Feinberg et al., 2014; Milaney et al., 2022; Wolitski et al., 2010). Safe and affordable housing also promotes economic mobility and helps families exit poverty (Ramakrishnan et al., 2021). In essence, housing is a basic need and a right for every person and family. For people who become involved in the criminal legal system, housing is equally critical and contributes to the successful transition from system involvement to the community.

However, barriers are put in place that bar people with conviction histories from obtaining housing. These barriers include discriminatory policies that deny housing to people with conviction histories, the use of criminal background checks, and community and societal stigma (Crowell, 2017; Ehman and Reosti, 2015; Prisoner Reentry Institute at John Jay College of Criminal Justice et al., 2017). Across the country, there are 1,300 documented local and state barriers to housing for people with conviction histories and 26 federal barriers (Lake, 2021). These laws are frequently implemented for fear that people with prior criminal histories will reengage in crime. However, success is more likely than recidivism—most people with conviction histories never have another conviction (Bushway et al., 2022).

Additionally, there is no evidence that housing policies that exclude people with conviction histories make housing complexes safer or that people with conviction histories have different tenancy outcomes than others without a history of arrests or convictions (Johnson, 2022). These restrictions create barriers for the millions of people that transition out of jails and prisons every year and struggle to find safe and affordable housing (U.S. Department of Health and Human Services, n.d.).[1] It is unclear, however, just how many people are excluded from housing because of their conviction histories. Past studies have surveyed people with a conviction history on their ability to secure housing (deVuono-powell et al., 2015). Others have surveyed people experiencing homelessness to determine the number of people with a past conviction or arrest history (Dean, 2011). Researchers have cataloged housing providers' exclusionary policies, but there have been no studies that examine the impact of exclusionary public housing policies on people with conviction histories (Tran-Leung, 2011).

This study by the Vera Institute of Justice (Vera) estimates the number of people who are excluded from public housing in two states, Michigan and Oklahoma, based on conviction history. Vera selected these two states for this analysis because both states have recently passed local and state-level criminal justice reform laws (e.g., Michigan's Clean Slate Act) that were signed into law during the past 2 years. In both states, there is momentum to remove the barriers for people with conviction histories to thrive after their involvement with the criminal legal system. This study contributes to the momentum, identifying the challenges and opportunities for housing people with conviction histories.

Specifically, access to public housing was evaluated because—unlike other housing providers in the private market—admissions policies for PHAs are published, public, and detail exclusionary criteria for people with conviction histories. The availability of these policies allows for the analysis and determination of the number of people who may be excluded from public housing because of their conviction histories.

Housing for People with Conviction Histories

It is estimated that more than 100 million people—nearly one out of every three American adults—have some sort of criminal record, including a history of arrest, conviction, and incarceration (Greenspan and DeBacco, 2014). People with a criminal history face challenges

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[1] More than 600,000 people are released from state and federal prisons each year. Another 9 million cycle through local jails.

securing employment, education, government services, and housing because of their conviction—yet it is exactly these supports that reduce recidivism and promote health and wellbeing for these people, their families, and their communities (Rosenfeld and Grigg, 2022).

Safe, stable housing often serves as the gateway for accessing further services and support. Housing makes it more likely that a person returning to their community finds and keeps employment; gets connected to medical, mental, and behavioral healthcare; rebuilds supportive and prosocial networks within their community; and is able to reestablish mutually supportive bonds with family (Lebel, 2017; Metreaux and Culhane, 2004). However, people with conviction histories frequently face challenges finding housing in the private market because landlords are often reluctant to rent to people with any criminal background, and because people with conviction histories are more likely to have lower incomes than the general public (Evans and Porter, 2015; Leasure and Martin, 2017; Looney and Turner, 2018; Thacher, 2008; Western and Pettit, 2010).

Finding housing has proven to be exceedingly difficult due to affordability, lack of housing supply, the absence of transitional housing, a shortage of capacity, and hazardous conditions in shelters. People with criminal records also struggle to obtain housing because of the stigma associated with a criminal record and the aftereffects of a conviction (Bradley et al., 2001). These barriers contribute to a high rate of housing insecurity and homelessness for this population; formerly incarcerated people are 10 times more likely than the general public to be homeless (Couloute, 2018).

Public Housing and People with Conviction Histories

There are nearly 3,350 public housing authorities (PHAs) in the United States serving 1.3 million families, and public housing is a resource available in virtually every community (U.S. Department of Housing and Urban Development, 2017). Federally assisted housing is intended to provide access to affordable housing as a public service. In determining who is allowed to live in public housing, PHAs have broad discretion over their own admissions criteria. By law, PHAs are required to deny people who have two types of convictions: convictions for manufacturing methamphetamines in public housing and convictions that require lifetime sex offender registration. For all other conviction types, PHAs have broad discretion in setting admissions criteria.

Criminal convictions did not always have an impact on a person's ability to obtain public housing. Policies that denied people access to public housing grew out of public safety and crime concerns starting in the mid-1980s. In response to growing concerns about violent crime and drugs in public housing neighborhoods, several federal regulations were passed. In 1988, the Anti-Drug Abuse Act authorized PHA funding from the U.S. Department of Housing and Urban Development (HUD) Secretary for initiatives to eliminate drug crimes. In 1990, the Cranston-Gonzalez National Affordable Housing Act was passed, allowing PHAs to use criminal records for admissions determinations, and the Housing Opportunity Program Extension Act (1996) required law enforcement agencies to comply with criminal background requests from PHAs. Before the turn of the century, the Quality Housing and Work Responsibility Act (1998) expanded PHA discretion to establish admissions eligibility and permanently banned people with a lifetime sex offense registry requirement, and the Independent Agencies Appropriations Act (1999) established the exclusion for people convicted of producing methamphetamines in federally subsidized housing (Silva, 2015).

Public Housing in Michigan and Oklahoma

There are 116 public housing authorities in Michigan administering 145,436 subsidized housing units. Traditional public housing makes up 13.0 percent of the units; 83.0 percent are either Project Based Section 8 or Housing Choice Vouchers, and 3.5 percent are financed under other arrangements. These PHAs are currently estimated to serve nearly 240,000 people across Michigan's 83 counties, with about 51 percent of residents identifying themselves as Black, non-Hispanic; about 42 percent White, non-Hispanic; 3 percent Hispanic; and the remaining 4 percent Native American, Asian/Pacific Islander (API), multiracial, or another race. However, Black, non-Hispanic residents are more heavily represented among those who use Housing Choice Vouchers than those who live in traditional public housing or Project Based Section 8, compared with other racial and ethnic groups.

The state of Oklahoma has 101 public housing authorities that administer 52,479 subsidized housing units. Of these PHAs, 22 percent (11,377) are traditional public housing, 50 percent (26,193) are Housing Choice Vouchers, 25 percent (13,024) are Project Based Section 8, and under 4 percent (1,885) are financed under other arrangements. Nearly 95,000 people across 77 counties reside in federally subsidized affordable housing in Oklahoma, with 40 percent of residents identifying as Black, non-Hispanic, 46 percent White, non-Hispanic, 1 percent API, 5 percent Hispanic, 7 percent Native American, and 1 percent multiracial or another category. As in Michigan, Black, non-Hispanic residents form the majority of residents of the Housing Choice Vouchers program.

Convictions in Michigan and Oklahoma

This study estimates that between 40,000 to 50,000 people are convicted of a felony in Michigan each year, and between 10,000 to 18,000 people are convicted of a felony in Oklahoma annually (exhibit 1).[2] These statistics give a conviction–*not imprisonment*–rate of 392 people per 100,000 in Michigan and 259 people per 100,000 in Oklahoma, with the differences in raw numbers at least partially explained by the size of Michigan's population, which is nearly 2.5 times that of Oklahoma (United States Census Bureau, 2021). In both states, nonviolent offenses make up the vast majority of all dispositions (see exhibit 2).

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[2] The exception to this statistic was 2020, the first year of the COVID-19 pandemic and the most recent year for which data are available in Michigan, which saw a dramatic drop in the number of convictions. This drop may be due to multiple reasons, such as a delay in reporting data to a central location, or an overall slowdown in court processing, preventing arrests from becoming convictions.

Exhibit 1

Total Felony Dispositions, Individuals Convicted of a Felony, and Individuals Convicted of a First Felony, by State and Year of Disposition
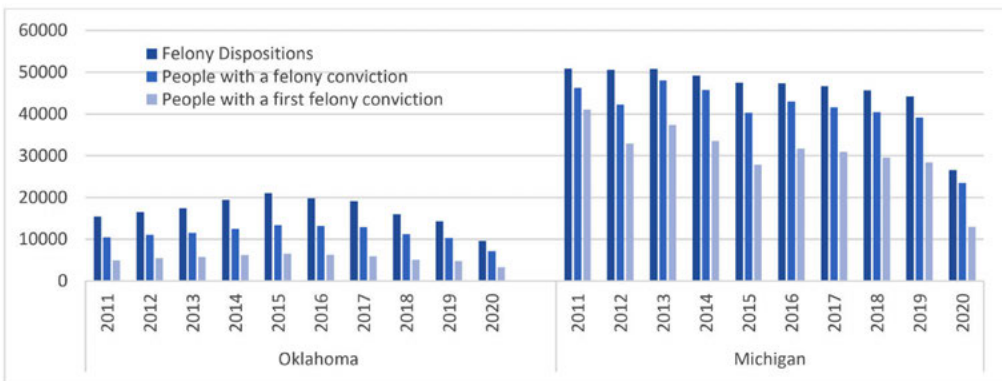
Sources: Felony dispositions, people with a felony disposition, and people with a first felony disposition in Oklahoma were calculated through an analysis of publicly available data from the Oklahoma Department of Corrections (Oklahoma Department of Corrections. 2022. Public Inmate Data). Felony dispositions were available from the Michigan Department of Corrections. (Michigan Department of Corrections. 2022. Statistical Reports *https://www.michigan.gov/corrections/public-information/statistics-and-reports/statistical-reports*). From these data, using state published recidivism rates and research on recidivism from the Bureau of Justice Statistics, Vera estimated the numbers of people with felony conviction and people with a first felony conviction

Exhibit 2

Type of Felony Disposition Over Years: Percent of Total Dispositions
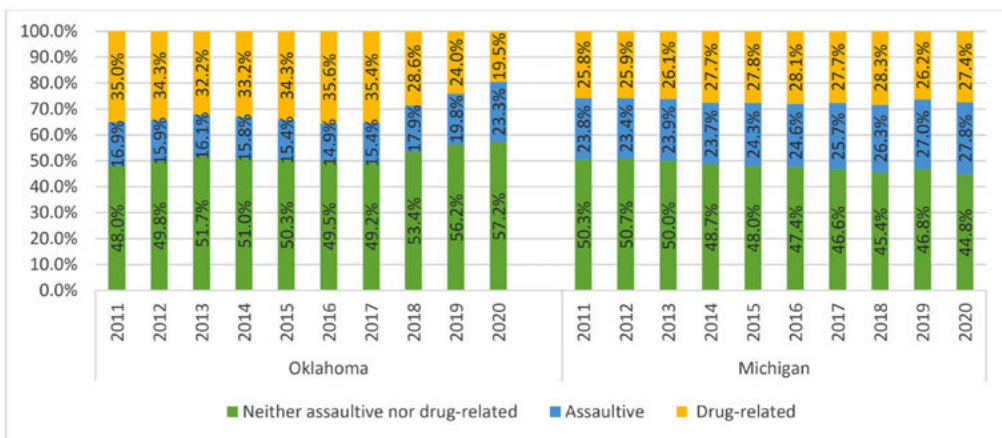
Sources: Using publicly available data from the Oklahoma Department of Corrections, felony dispositions were coded for whether they were assaultive, drug-related, or neither, by year of disposition (Oklahoma Department of Corrections. 2022. Public Inmate Data). Felony dispositions by type were available from the Michigan Department of Corrections. (Michigan Department of Corrections. 2022. Statistical Reports *https://www.michigan.gov/corrections/public-information/statistics-and-reports/statistical-reports*)

Aims of the Present Study

This study estimates the number of people with a conviction history who are potentially excluded from public housing in two states—Michigan and Oklahoma—and projects the number of people who might regain eligibility for public housing if PHAs change their lookback periods, the span of

time in which conviction history can be considered for admissions decisions. In both states, these figures are likely to be minimum estimates due to simplifying assumptions and the exclusion of the effect that such policies have on family members of people with a conviction history who wish to remain united as households.

Methods

To estimate the number of people living in Michigan and Oklahoma with conviction histories that could make them ineligible for public housing, Vera researchers compiled the following pieces of information:

1. The lookback periods used by public housing authorities in each state by type of conviction.

2. The number of people in each state with a conviction by year, county, severity (misdemeanor or felony), and type (violent, drug-related, or other).

3. The number of people reentering and living in the community with a conviction by county, offense severity, type of conviction (violent, drug-related, or other), and year of conviction or release for those with a custodial sentence.

4. The number of people excluded from public housing due to federal mandates.

5. The proportion of people with a conviction who met income limits for public housing eligibility, disaggregated by year since conviction or release from incarceration.

Lookback Periods

In both states, Vera visited each PHA's websites to obtain Admissions and Continued Occupancy Plans and/or Administrative Plans. Some PHAs did not have their documents available online or did not have a website. For these PHAs, Vera contacted the PHAs to obtain either a written or verbal description of its policy regarding eligibility for housing based on criminal history or conduct. Verbal confirmation of policies took place over the phone. Several PHAs either did not have the resources to provide written policies or were unwilling to provide a verbal description of their policy. To obtain verbal policies, researchers used a strategy common to Fair Housing Centers: assuming the role of a friend or neighbor of a prospective tenant with a conviction history and requesting information about eligibility policies and background check procedures on behalf of this nonexistent person. Through these methods, researchers obtained 31 written policies in Michigan, and 32 written policies and 24 verbal descriptions of policies in Oklahoma.

Several written or verbally described policies did not specify the types of convictions that were potentially excludable or the timeframe the PHA would use to look back for a conviction. The research team assumed that PHAs with ambiguous or missing policies are following guidance from HUD on the use of criminal background checks, which has suggested a lookback period of 5 years from the date of application for serious crimes—including felony convictions for drug-related crime and violent crime—and prohibiting the use of arrest data alone from being used as a basis for a denial (Kanovsky, 2016). In Oklahoma, some counties had more than one PHA.

Because conviction and release information are available at the county level, the research team applied a single policy to the entire county. In most cases, PHA policies within a county did not conflict. In cases where there was a conflict or lack of clarity, the team applied a written policy in preference over a verbal description for the county; if both policies were verbal or written, the team used the least restrictive policy. This approach maintained a minimum or conservative estimate of the number of people potentially excluded from public housing due to their conviction histories. In both states, several PHAs described potential exclusions of individuals based not only on a conviction, but an eviction for criminal activity, a pattern of arrests, or other evidence. This study used only information about convictions in each state, rather than data on arrests or evictions related to crime, due to the challenges of obtaining and interpreting such data and to ensure that estimates of people excluded due to a conviction history would be conservative.

The Type, Timing, and Location of Convictions and Releases

Data sources and methods for estimating the number of people potentially excluded from public housing due to a misdemeanor conviction or a federal felony were common in both states. However, data sources and methods for estimating the number of people potentially excluded due to a state felony differed between Michigan and Oklahoma.

Michigan: State Felony Convictions

Publicly available statistical reports were used to estimate the number of people in Michigan who were potentially ineligible for public housing due to PHA policies and to make projections of how many Michiganders could regain eligibility for public housing if lookback periods were changed. These projections required several simplifying assumptions, which were made based on existing research about housing and criminal legal systems and to ensure that estimates were conservative wherever possible. The research team gathered aggregated data on state felony convictions from the Michigan Department of Corrections (MDOC) Statistical Reports from 2011 to 2020. These reports describe the number of convictions by county of disposition and type of conviction (violent, drug-related, or other) within the year (Michigan Department of Corrections, 2022). These counts of felony convictions, however, represent court proceedings rather than individuals, because a person may have more than one court proceeding in a given year. To estimate the number of people with a conviction, the study factored into the analysis the possibility of multiple felony convictions per person within a single year (*intra*-year recidivism) and multiple convictions per person in different years (*inter*-year recidivism).

Michigan: Accounting for Intra-Year Felony Recidivism

The number of convictions in a jurisdiction exceeds the number of people with a conviction within a given year due to intra-year recidivism, and a person may face multiple proceedings within a year. This study sought to estimate the ratio of convictions to people with a conviction. By doing so, the ratio would be used to scale down the number of convictions to the number of people with a conviction. To make this estimate, the team used another ratio of events to people in the court system in Michigan, where not all convictions lead to a term of incarceration, making convictions

with a custodial sentence a subset of all convictions. MDOC Statistical Reports, in addition to the aggregate data described previously, also provide data points on the number of convictions with a custodial sentence and the number of prison intakes. From these two numbers, the team was able to calculate a ratio of convictions with a custodial sentence (events) to individuals admitted to prison (people) within each year. The study assumed that this ratio of events to people among those with a custodial sentence was the same as the ratio of events to people among those without a custodial sentence. This simplifying assumption is grounded in research showing that custodial sentences are not more effective at reducing recidivism than non-custodial sentences (Villettaz et al., 2015). The team then divided the number of total convictions by this ratio (a ratio of convictions that carried a custodial sentence to people with a custodial sentence) in order to estimate the number of people with a conviction in a given year.

Michigan: Accounting for Inter-Year Felony Recidivism

Individuals may have convictions in several years that are within a PHA's lookback period. To avoid counting people more than once, we scaled down the number of unique people convicted each year by an inter-year reconviction rate, using return to incarceration as a proxy for reconviction. Although MDOC produces estimates of the cumulative 3-year return to incarceration rate, reconviction and reincarceration rates are not constant over time, they are highest in the year immediately following release from incarceration, with increasingly smaller proportions of people returning to incarceration in each subsequent year (Durose and Antenangeli, 2021). Therefore, the research team distributed the Michigan cumulative return to incarceration rate unevenly across years from prison release based on research from the Bureau of Justice Statistics describing the shape of the recidivism curve over time from the point of release from incarceration (Durose and Antenangeli, 2021).

Michigan: Number of People Returning from Prison and Living in Communities

Two situations occur in which someone with a conviction would be living in their community following their conviction: if their sentence did not include a term of incarceration or if they were released from incarceration within that year. The team assumed that all people with a misdemeanor conviction were living in the community for at least part of the year of their conviction, because misdemeanor custodial sentences are typically less than a year. The team also assumed that individuals convicted of a felony but not incarcerated were living in the county of their conviction. Finally, the team assumed that people convicted of a felony and admitted to prison were ineligible for public housing in the year of their conviction, because felony sentences are typically a year or longer.

MDOC Statistical Reports provided the number of people released from incarceration each year. The research team assumed that the total number of releases each year followed the same distribution of convictions by county and type for the same year. The team did not have information on Michiganders with an out-of-state criminal conviction who may also become eligible for public housing through changes in lookback periods, and so did not add these people to the estimates.

Oklahoma: State Felony Convictions

In Oklahoma, data on each person's complete criminal history are publicly available, including the year of conviction, statute code and a short description of the offense, the sentence type (incarceration or probation) and length, whether the person is currently incarcerated or living in the community, and the county from which they were convicted. These data are updated regularly; the team downloaded these data on November 3, 2022. The team classified each conviction in the publicly available data as violent, drug-related, or neither by reviewing Oklahoma criminal statutes and coding each offense for each person, and noting whether the offense was for a felony or a misdemeanor.

Several situations occurred in which assumptions were necessary. First, some statutes exist under which a violation could result in a misdemeanor or a felony, depending on the severity of the offense (such as theft of property being above or below a certain value threshold). In these cases, the researchers assumed the offense was for a misdemeanor. This approach was taken to minimize the number of people estimated to be potentially excluded from public housing, because fewer PHAs have policies to exclude individuals with misdemeanors, thus minimizing the number of people potentially restored through changes in PHA policies. Second, for people currently on probation or parole, Vera researchers assumed they lived in the county where their probation office was located, but for people who had completed all requirements related to their convictions, the team assumed they lived in the county of their most recent conviction. Third, 20,324 people did not have a year attached to their single offense and were not subject to a federally mandated ban from public housing. To avoid overestimating the number of people currently excluded from public housing, the team assumed that all these individuals would not be excluded from public housing due to their conviction status and did not include any of them in the estimates.

County-Level Misdemeanor Convictions

Vera researchers used statistical reports that provided aggregate information in Michigan and publicly available, individual-level data in Oklahoma to estimate the number of people with state-level offenses of the type, timing, and location that could make them ineligible for public housing. However, no similar data source for county-level misdemeanors exists. To estimate the number of people with a misdemeanor conviction per year, the team counted jail admissions for a sentence as a proxy for a misdemeanor conviction. Jail admissions for a sentence serve as a minimum estimate for misdemeanor convictions because many misdemeanor sentences do not include incarceration or set the sentence as time already served. The team used Vera's Incarceration Trends estimates of jail admissions for sentences by county and year. The Incarceration Trends uses data from the Bureau of Justice Statistics Annual Survey of Jails, Census of Jails, and Mortality in Correctional Institutions (Vera Institute of Justice, 2022). Vera researchers then accounted for intra- and inter-year misdemeanor recidivism within each PHA's lookback period using estimates for misdemeanor recidivism from the Brennan Center for Justice (Craigie et al., 2020).

In Oklahoma, there were several public housing authorities that might deny housing to people who were currently serving a term of probation. For state felony convictions, the available data indicated whether a person was on probation. However, the same was not possible for aggregate data available on county misdemeanors. Vera, therefore, assumed there were no people on

probation for county misdemeanors to minimize the estimated number of people potentially excluded from housing and the numbers potentially restored should there be changes in admission policies. As mentioned, considering only misdemeanor convictions with a custodial sentence promotes a conservative estimate.

Federal Felony Convictions

The research team retrieved information on federal convictions and releases from the Bureau of Justice Statistics Federal Criminal Case Processing Statistics and the Federal Bureau of Prisons (Federal Bureau of Prisons, 2022; U.S. Department of Justice, 2020). In both states, the team assumed the county-level distribution of convictions and reentries for federal felonies followed the distribution for state felonies, which the researchers obtained through statistical reports in Michigan or through an analysis of publicly available data in Oklahoma.

People Excluded From Public Housing Due to Federal Mandates

People who have a mandated lifetime sexual offender registry requirement and those convicted of manufacturing methamphetamine in public housing are ineligible for federally subsidized housing. In Michigan, the team took data on the number of people meeting these criteria from MDOC's statistical reports and data published by the Michigan State Police (Michigan State Police, 2017). Michigan has three "tiers" (levels of severity) of registrants that determine the length of time people must remain on the registry, how often they must report in person to law enforcement, and the restrictions with which they must comply. Only Tier 3 registrants must remain on the registry for their lifetime and are therefore excluded from public housing under federal law. Because data on the number of Tier 3 registrants were unavailable, all people on the sex offense registry were excluded from eligibility for public housing.

Similarly, although federal law prohibits people convicted for having manufactured methamphetamine in public housing from ever living in public housing again, data on the location of manufacture for people convicted for this offense were not available. Vera researchers, therefore, assumed that all convictions for methamphetamine manufacturing in Michigan arose from incidents in public housing, and all such people are excluded from public housing eligibility. In Michigan, because no available estimate on recidivism rates for people with convictions for manufacturing methamphetamine exists, the team assumed that each relevant disposition within and across years represents a new person permanently excluded from public housing.

In Oklahoma, the names and Oklahoma Department of Corrections (ODOC) identifying numbers for people whose convictions were for offenses that would result in a lifetime sex offender registration requirement were publicly available in separate databases. The team matched these ODOC numbers against the November 3, 2022, conviction dataset to exclude these people from eligibility for public housing. As in Michigan, the location of methamphetamine manufacturing convictions was not available, so the team assumed all convictions under statutes that referred to people manufacturing or possessing, selling, or distributing precursors for the manufacture of methamphetamine took place

on public housing property, and all people with such convictions were permanently excluded from public housing and unable to be restored through changes in state legislation.

These assumptions maximize the number of people with a conviction who are permanently excluded from public housing, minimizing estimates of those excluded due to PHA discretionary policies.

Income Limits

People and households are eligible for public housing if they do not exceed certain income limitations. People with a conviction whose incomes exceed those limits would not gain eligibility for public housing through changes in admissions policies based on conviction histories and were excluded from Vera's estimates. The team took data on Area Median Income and eligibility thresholds under the Low Income (LI), Very Low Income (VLI), and Extremely Low Income (ELI) thresholds from HUD's Fair Market Rents and Income Limits data for 2021 (U.S. Department of Housing and Urban Development, 2023). The team produced estimates of the incomes of people leaving incarceration and those with a conviction history in the years following contact with the criminal legal system. The estimates were based on research from the Brookings Institute and the Brennan Center for Justice; these institutions based their research on data from the National Longitudinal Survey of Youth, 1997 (NLSY97) (Bureau of Labor Statistics, 1997; Craigie et al., 2020; Looney and Turner, 2018). Because the NLSY97 survey captures income distributions for people with a conviction history as a categorical variable for each year following release from incarceration, Vera assumed that income followed a stepwise function with a uniform distribution within each income category.[3]

To estimate the number of people leaving incarceration who would be eligible for public housing, the team assumed that people leaving incarceration will live alone in public housing. This assumption reduces the amount of income the person may earn before they lose income eligibility for public housing, because income thresholds for public housing increase with the size of the household in a non-linear fashion. Although many people may live with family members in the period following their release from incarceration, it was not possible to make reasonable assumptions about household size or the income of other potential household members.

This assumption also meant that researchers did not consider the number of people who might be affected by a change in policy due to their status as family and household members of people with conviction histories. If one member of a family is ineligible for public housing, the whole family will be denied unless the person with a conviction history leaves the household.[4] Not attempting to count family members likely minimizes Vera's estimates of the number of people currently excluded from public housing due to exclusionary rules.

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[3] For example, if the income threshold for public housing in a county was $37,500, Vera researchers assumed that one-half of the people in the $25,000 to $50,000 income category were at or below $37,500 and the other one-half were above it, as $37,500 is the midpoint between the minimum and maximum value of the category.

[4] Many PHAs have rules requiring that all adults living in a home undergo background checks, with some PHAs screening tenants as young as 13. If it is determined that a person is ineligible because of a conviction or arrest record, they are not allowed to reside in that unit. A whole family may be denied if a parent or caregiver is proven to be ineligible.

Results

Vera estimates that a minimum of 284,000 adults in Michigan and 233,000 adults in Oklahoma have conviction histories that make them potentially ineligible for public housing or housing choice vouchers due to the policies of public housing authorities in the state. To put these numbers in context, more than 3.5 percent of all adult Michiganders and 7.6 percent of all adult Oklahomans are potentially excluded from public housing due to the eligibility rules of public housing authorities. In both states, these percentages are likely to be minimum estimates due to both simplifying assumptions and excluding the effect that such policies have on family members of people with a conviction history who wish to remain united as households. At a minimum, more than one-half million (517,000) Americans in just these two states are potentially excluded from federally assisted housing due to the application of discretionary policies by public housing authorities.

In Michigan, if PHAs were to look only at the past 2 years of convictions and releases from incarceration, at least 139,000 people would automatically regain their eligibility for public housing; if PHAs were to look back only at the past 6 months, a minimum of 230,000 Michiganders would regain their eligibility. Policies to increase housing access in Michigan could affect at least 1.7 to 2.9 percent of the adult population in the state. In Oklahoma, if PHAs were to reduce lookbacks to 2 years of convictions and releases from incarceration, at least 125,000 people, or 3.1 percent of all Oklahomans, could have their eligibility for public housing restored; if lookbacks were restricted to 6 months, more than 160,000 could have their eligibility restored, representing 4.0 percent of all Oklahomans.

These numbers are a minimum of the number of people affected. Most importantly, the researchers do not consider family and household members of people with conviction histories who may be affected. If one member of a family is ineligible for public housing, the whole family may be denied unless the person with a conviction history leaves the household. Some families may be unwilling to live apart; for others, it may be financially impossible to maintain more than one household; or the person with a conviction history may be a single parent whose ineligibility renders their children ineligible as well, by default.

Second, Vera assumed PHAs that do not have or do not publish explicit policies are following guidance from HUD and only considering serious convictions for the past 5 years; however, this practice is unlikely to be the case, as many PHAs across the country have indicated that they consider significantly longer timescales for a criminal background check, up to and including entire lifetimes; that minor convictions are also considered; or a history of arrest alone is sufficient to reject an application for tenancy (Tran-Leung, 2015).

Third, Vera researchers have included the year 2020 in estimates of the number of people potentially excluded from federally assisted affordable housing due to a conviction in Michigan and the years 2020–2022 in Oklahoma. Due to the COVID-19 pandemic, the years 2020–2022 added far fewer people to the list of those facing exclusions from public housing due to a criminal conviction than in a typical year. Although some jurisdictions have made conscious policy efforts in

the past few years to reduce the rate at which people are convicted and incarcerated, some rebound in the reach of the criminal legal system following the pandemic will likely occur.

Discussion

There is an absence of evidence that policies that deny housing to people with conviction histories contribute to safer housing complexes and communities. The information that is used to make the determination about the danger and risk a person may pose has some limitations. Criminal background checks provide information about a person at the time of their most recent conviction, but nothing is revealed about what has happened with them in the time since, such as success in employment and connections forged in the community (Bushway et al., 2022). If a criminal background is used during the admissions process, an individualized assessment should accompany the background investigation that considers mitigating factors such as "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 history before and/or after the conviction or conduct; and evidence of rehabilitation efforts" (Kanovsky, 2016). Using an individualized assessment when making housing decisions may decrease the discriminatory impact of exclusions absent the consideration of mitigating evidence (Kanovsky, 2016). Although people with conviction histories are not a protected class under the Fair Housing Act, guidance released by HUD suggests that the use of arrest and conviction histories for the basis of housing denials may violate the Fair Housing Act under the following theories of liability: disparate treatment, disparate impact, and refusals to make reasonable accommodations (McCain, 2022). Recently settled cases in Hesperia, California, and New York City test the applicability of these theories. In both cities, legal filings claimed that crime-free ordinances and blanket exclusions for people with arrest and conviction histories had a disparate impact on people of color and violated the Fair Housing Act (The United States Department of Justice, 2023; U.S. District for Eastern District of New York, 2019). Both cases were settled before trial.

In recent years, several jurisdictions have changed their policies to increase housing access for people with conviction histories. In 2020, the Champaign Housing Authority in Illinois announced that it would no longer use criminal background checks in admissions decisions outside of the federal requirements. Several states have also started to limit how landlords may consider a conviction history when determining an applicant's eligibility. In Colorado, the Rental Application Fairness Act (2019) prevents landlords from considering arrests that do not lead to a conviction and convictions older than 5 years, with some exceptions.[5] In Illinois, the Public Housing Access Bill (2021) limits the lookback period of PHAs to 6 months.[6] In New Jersey, the Fair Chance in Housing Act (2021) limits the use of criminal background checks to after an offer of housing has been made and limits the types of convictions that can be used for admission decisions (New Jersey Office of Attorney General, 2021). Since passing these laws, more states and local municipalities are considering similar changes.

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[5] Rental Application Fairness Act, H.B. 19-1106, 2019 Reg. Sess. (Co. 2019).

[6] The Housing Authorities Act, 101 General Assembly, H.B. 5574, 2019 Reg. Sess. (Il. 2019).

Conclusion

Housing is a foundational and basic building block of civic life. For people returning to communities after involvement in the criminal legal system, housing is often the most important tenet of successful reentry. Communities are beginning to explore different strategies to remove housing barriers for people with conviction histories. PHAs, as leaders in providing safe, stable, and affordable housing, have a role and an opportunity to strengthen communities and provide an essential need for one of our most vulnerable populations. The effort starts with ensuring that all doors to housing are open for everyone.

Acknowledgements

Authors

Niloufer Taber is the associate director for research for initiatives focused on postsecondary education in prison and connecting people returning to their communities with housing at the Vera Institute of Justice (Vera). Jacqueline Altamirano Marin is a program associate for Vera's Opening Doors to Housing project. John Bae is a program manager with Vera's Opening Doors to Housing project.

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