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One Strike to Second Chances: Using Criminal Backgrounds in Admission Decisions for Assisted Housing

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ABSTRACT

The U.S. Department of Housing and Urban Development (HUD) has changed its position toward housing individuals with criminal records from strict one-strike policies in the 1980s to providing second chances to returning citizens. Many public housing authorities have not updated their admission policies for using criminal backgrounds and still adhere to the one-strike philosophy. In response to new guidance from HUD, housing agencies are trying to find a balance between screening practices to identify demonstrable risk but avoid discrimination and violation of the Fair Housing Act. This research examines several questions critical to assisting housing providers to address the new guidance from HUD. Findings provide direction for housing providers on understanding recidivism risk rates, using useful lookback periods, considering risk and harm across crime types, and verifying rehabilitation and other evidence to design informed policies and procedures for using criminal records in admission decisions for assisted housing.

Research has long examined the relationship between race and criminal justice outcomes at each stage of the criminal justice system, starting with police contact. In 2012, the estimated national arrest rate was 3,886.4 arrests per 100,000 residents. For Whites, this rate was 3,392.3 per 100,000, whereas for Blacks it was 7,920.1 per 100,000 residents (Snyder & Mulako-Wangota, 2014). This trend follows a similar pattern for rates of violent crime, property crime, and drug crime, with arrest rates for Blacks higher than for their White counterparts for each category of crime (violent, property, and drug). Similar trends are seen when examining U.S. conviction and incarceration rates. The Bureau of Justice Assistance reports a felony conviction rate of 59%. Of these convictions, 59% were White, whereas 38% were Black (Durose & Langan, 2007), an overrepresentation given Blacks make up approximately 13% of the total U.S. population, whereas Whites make up 77% of the total U.S. population (U.S. Census Bureau, 2015). Additionally, after controlling for relevant legal factors, Black and Hispanic defendants are more likely to be detained prior to trial (Demuth & Steffensmeier, 2004), an important consideration given those who are detained are more likely to be convicted and receive harsher sentences than those who are released prior to trial (Johnson & Betsinger, 2009; LaFrenz & Spohn, 2006; Spohn, 2009; Ulmer, Eisenstein, & Johnson, 2010).

Disparities are also seen in the corrections system. Currently, there are 2.2 million individuals incarcerated in U.S. prisons or jails (Kaeble, Glaze, Tsoutis, & Minton, 2016). This equates to an incarceration rate of 690 per 100,000 U.S. residents (Kaeble et al., 2016), whereas the rate is 4,347 per 100,000 for Black

males, 1,755 per 100,000 for Hispanic males, and 678 per 100,000 for White males (Pew Research Center, 2013). Similarly, female minorities are disproportionately represented in U.S. incarceration rates, with Black women incarcerated at a rate of 260 per 100,000 compared with 91 per 100,000 for White women (Pew Research Center, 2013). Differential involvement in the criminal justice system is not necessarily a result of differential involvement in criminal behavior. For example, Mitchell and Caudy (2015) found that differences in drug offending, nondrug offending, and residing in neighborhoods with heavy policing emphasis on drug offending cannot explain racial disparities in drug arrests. Together, these statistics suggest the increased likelihood that minorities, especially Black males, compared with similarly situated White individuals, will be arrested, detained, convicted, and imprisoned. Mass incarceration in particular has resulted in imprisonment becoming a common life event for Black males (Western & Pettit, 2010).

Because minorities are overrepresented at multiple stages of the criminal justice process, they disproportionately experience reentry into the community. The process of prisoner reentry is currently a critical issue, as the majority of incarcerated inmates are eventually released and, as a result of mass incarceration, more individuals are currently leaving prison than ever before (Kubrin, Squires, & Stewart, 2007). Individuals returning to society have served longer prison terms and have received little in terms of rehabilitation and/or reentry programs to prepare them for the transition, another consequence of mass incarceration (Kubrin et al., 2007; Seiter & Kadela, 2003). Further complicating this process, reentering individuals often return to communities that are socially disorganized and have few resources in terms of job opportunities and social services (Kubrin et al., 2007). This is problematic, because the majority of individuals returning from prison are in need of assistance in multiple areas. Successful reentry is considered both difficult and improbable as reentering individuals typically have few existing resources and social capital, and are unable to find employment and housing in this critical time period because of their criminal record (Petersilia, 2003).

Obtaining stable housing in particular is a critical need for individuals returning from incarceration to the community (Petersilia, 2003). Options are typically limited, with few affordable housing options (Rodriguez & Brown, 2003), and restrictions are often placed on individuals with substance abuse, mental illness, or felony records (Hammett, Roberts, & Kennedy, 2001; Petersilia, 2005). Additionally, given limited financial stability, most returning individuals cannot afford housing on their own, but even when they can, many landlords deny individuals with felony records (Petersilia, 2005). Legal restrictions have limited the range of options for housing, as past public housing laws have required housing agencies to deny individuals with felony records (Petersilia, 2005). This is problematic as returning individuals are commonly under community supervision upon their release. As part of this supervision process, individuals must comply with a set of probation/parole conditions that typically require the attainment of housing and employment, yet accessing these services is often challenging and/or impossible (Kubrin et al., 2007). The failure to do so can result in the violation of their supervision conditions, and potential reincarceration. Given the unequal distribution of incarceration amongst racial groups, minorities, especially Black men, are more likely to experience prison and thus more likely to experience greater reentry challenges (Lynch & Sabol, 2001).

As a result of the obstacles to finding housing postrelease, returning individuals, particularly Black men, often face residential instability and frequent moves, both of which have been linked to recidivism. In a study of released offenders in Ohio, Steiner and colleagues (2015) found offenders were less likely to recidivate when they lived with a spouse, parent, or relative, or were placed in a residential program. Offenders who lived with a boyfriend/girlfriend, were homeless, or moved frequently were more likely to recidivate (Steiner et al., 2015). Similarly, Makarios and colleagues (2010) found parolees had serious problems with housing in their first year postrelease, living in an average of two residences. When examining the relationship between residential instability and recidivism, they found that a large portion of parolees committed new crimes within their first 12 months, and this was influenced by reentry challenges, particularly unstable housing (Makarios, Steiner, & Travis, 2010). Other research confirms these findings, reporting a relationship between residential instability and frequent moves with increased recidivism, rearrests, and treatment failure (Broner, Lang, & Behler, 2009; Meredith, Speir,

& Johnson, 2007; Schram, Koons-Witt, Williams, & McShane, 2006; Tillyer & Vose, 2011; Visher & Courtney, 2007; Watson et al., 2004).

On the other hand, studies have identified the positive effect housing assistance programs can have on criminal justice outcomes. For example, Culhane and colleagues (2002) found reduced rates of hospitalizations and time incarcerated for individuals placed in supportive housing. Similarly, a program evaluation of housing homeless individuals with mental illness conducted by the Corporation for Supportive Housing found a strong correlation between the percentage housed and percentage retained in the program, which meant decreased hospitalization and incarceration rates (Burt & Anderson, 2005). A more recent evaluation found a decrease in both recidivism and correctional costs through the use of housing assistance programs (Hamilton, Kigerl, & Hays, 2015).

On April 4, 2016, the U.S. Department of Housing and Urban Development (HUD) issued guidance to housing providers in relation to the Fair Housing Act and how it applies to the use of criminal records for admitting and terminating tenants (U.S. Department of Housing & Urban Development, 2016). This guidance warned housing providers that admission policies resulting in discrimination, even if there is no intent to discriminate, violate the Fair Housing Act. Furthermore, arrests can no longer be used to deny admission to applicants; only convictions can be considered. Under this guidance, HUD asked housing providers to reassess their admission policies and procedures to confirm nondiscriminatory practices and provide evidence for policies that use criminal backgrounds to protect resident safety and the property. Since no specific recommendations were given, housing providers are struggling to find a balance between screening practices to identify demonstrable risk but avoid discrimination. Blanket bans on renting to people with criminal records violate the Fair Housing Act and impact Blacks and Hispanics in particular (Ehman, 2011) since they are disproportionately arrested, convicted, and imprisoned.

Public housing authorities (PHA), similar to other housing providers, can design their own policies and procedures for using criminal histories in their admission process. The HUD statute only has two lifetime bans for admission to federally subsidized housing: individuals who have manufactured methamphetamine in federally assisted housing, and sex offenders who are subject to lifetime sex offender state registries. Prompted by HUD guidance, while recognizing that many of their policies related to the use of criminal backgrounds are consistent with outdated one-strike philosophy, PHA are reassessing policies to extend opportunities to their constituents. This research article addresses the following research questions to assist PHA in updating their admission policies for assisted housing: (a) How reliable are criminal records in identifying suitable tenants?; and (b) How can PHA use the existing research on recidivism to restructure their admission policies? These research questions are answered by applying recidivism research to the use of criminal histories for assisted housing admission policies and procedures. This research is timely as the latest HUD notice (U.S. Department of Housing & Urban Development, 2016) has sparked immediate attention to current admission practices that may violate the Fair Housing Act. The article provides housing practitioners with additional resources to make informed decisions for amending their admission policies to comply with the Fair Housing Act. Although this study focuses on a federal issue that impacts PHA nationwide, the state of Texas is used throughout the article as an example.

History of One Strike in Housing Decisions

Although housing assistance programs have been found to have positive impacts, access to assisted housing is often limited for individuals reentering society, even those with very minor offenses (Ammann, 2000; Carey, 2005; Tran-Leung, 2011; Vallas & Dietrich, 2014). Returning citizens often live with a family member or close friend after first being released because of a limited housing stock and criminal history restrictions (Roman & Travis, 2006; Tesfai & Gilhuly, 2016). These stringent criminal history restrictions for housing have been in place since the 1980s. To fight the war on drugs, Congress passed the Anti-Drug Abuse Act of 1988. This act required PHA to evict tenants from assisted housing for drug activity on or near the housing premises (Carey, 2005). In the 1990s, HUD strengthened stringent screening and

eviction policies for assisted housing residents (Reilly, 2013). President Clinton enacted the Housing Opportunity Program Extension Act of 1996 on March 28. This act allowed PHA to deny admission and evict residents on the basis of drug activity, alcohol abuse, and criminal behavior (U.S. Department of Housing & Urban Development, 1997).

On April 12, 1996, notice PIH 96–16 was issued to PHA to enforce stricter admission and eviction procedures to support the act and *One Strike and You're Out* policies. The purpose of this notice was to reduce drug-related and criminal activity by eliminating second chances, to make neighborhoods safer and improve the quality of life for assisted housing residents. Although similar laws had been in place since the 1980s, enforcement by PHA was sporadic because of potential constitutional and legal consequences. The 1996 notice reiterated existing admission and eviction policies and emphasized two new provisions: the Housing Opportunity Program Extension Act and changes to the Public Housing Management Assessment Program (PHMAP). The Housing Opportunity Program Extension Act provided PHA with further authority to deny admission to assisted housing grounded on both alcohol abuse and drug activity. The modifications in PHMAP resulted in a new metric for assessing public housing management performance and security, and PHA were now evaluated on the effectiveness of their admission and eviction policies. They were encouraged to develop zero-tolerance policies and conduct extensive criminal background checks (U.S. Department of Housing & Urban Development, 1996a).

One month later, on May 15, 1996, PIH 96–27 was issued to extend the previous requirements and further clarify admission and eviction procedures that PHA were required to implement under the Housing Opportunity Program Extension Act (U.S. Department of Housing & Urban Development, 1996b). Following this notice, the issuance of PIH 96–52 promoted the new PHMAP security indicator, which required PHA to establish and adhere to admission and eviction procedures according to one-strike rules and track and report criminal activity. As an example of one-strike policies, if a guest is engaging in illegal drug use, the entire household may be evicted from assisted housing (U.S. Department of Housing & Urban Development, 1996c).

A survey was distributed nationwide to all PHA (3,190) in the fall of 1996 by HUD's Office of Crime Prevention and Security. The 1,818 PHA that responded to the survey reported 19,405 applicants were denied admission to assisted housing within 6 months after one-strike policies were implemented because of criminal or drug-related activity, almost double the number of applicants denied in the previous 6 months before the new policies were enacted. This does not include the unknown number of prospective applicants who were deterred from applying because of the policy. Drug-related evictions also increased by 1,096 during this time frame. HUD reported that the new policies were succeeding and the removal of criminals from PHA properties was helping assisted housing residents attain self-sufficiency. This claim was based on an open-ended question that asked respondents to describe the benefits of the new one-strike policies but did not require quantifiable metrics to verify such statements (U.S. Department of Housing & Urban Development, 1997).

One-Strike Reform

In the last decade, PHA admission and eviction one-strike policies have received major scrutiny as the United States has been recognized as the country with the highest incarceration rate in the world (Travis, Western, & Redburn, 2014). Outcry regarding the injustices of U.S. policy and the mounting financial costs in the criminal justice system has resulted in new measures to promote rehabilitation and reintegration for individuals returning to society (Nagin, Cullen, & Jonson, 2009; Rhine, Mawhorr, & Parks, 2006). For example, the Second Chance Act was signed into law on April 9, 2008, by President George W. Bush to reduce recidivism and barriers to reentry. Since the passage of the Second Chance Act, the Bureau of Justice Assistance funded hundreds of reentry grants to programs across the United States to focus on four main objectives: (a) develop multifaceted reentry plans; (b) create reentry task forces; (c) collect data and measure outcomes; and (d) facilitate collaboration between criminal justice and social service systems, including housing (Lindquist, Willison, Rossman, Walters, & Lattimore, 2015). Although the atmosphere has changed and the federal government has established new priorities to

restore the criminal justice system, PHA have continued to operate under many of the same admission and eviction procedures, and have more stringent policies than federally required (Curtis, Garlington, & Schottenfeld, 2013; Roman & Travis, 2006). The current language in the admissions and continued occupancy policies (ACOP) and administrative plans for assisted housing has not been changed for many agencies and perpetuates the one-strike philosophy (Vallas & Dietrich, 2014).

A report by the Sargent Shriver National Center on Poverty Law highlighted four major areas in which PHA deny admission to assisted housing applicants: unreasonable lookback periods; use of arrests; overbroad general categories of criminal activity; and underuse of mitigating circumstances (Tran-Leung, 2015). Admission policies in the ACOP and administrative plans often have no time limits and permanently ban applicants convicted of particular crimes, do not explain the length of time for the screening period, or have unreasonable lookback periods exceeding 20 years at times. Many assisted-housing providers use arrests as evidence of criminal activity. This is problematic since arrests disproportionately impact minorities and do not prove that a crime occurred, and limited evidence suggests arrests lead to reductions in recidivism and improved public safety. Other policies prohibit applicants with any charges or convictions, even minor offenses such as littering, public intoxication, fishing/hunting without a license, or civil disobedience. Furthermore, mitigating evidence regarding the nature and seriousness of the incident is often not considered (Tran-Leung, 2015).

In response to the Second Chance Act and recent scrutiny, former HUD secretary Shaun Donovan issued a letter to PHA on June 17, 2011, to reinforce the second chances commitment. PHA were reminded that the HUD statute only has two lifetime bans for admission to federally subsidized housing: individuals who have manufactured methamphetamine in federally assisted housing, and sex offenders who are subject to lifetime sex offender state registries. Secretary Donovan emphasized the need for a balance between keeping residents and the property safe and reuniting returning citizens with their families (U.S. Department of Housing & Urban Development, 2011). In 2015, a Supreme Court case ruling changed the landscape for housing providers. In *The Texas Department of Housing & Community Affairs (TDHCA) v. Inclusive Communities Project, Inc.*, the Supreme Court ruled organizations can be held liable for violating the Fair Housing Act even if they do not intend to discriminate. Inclusive Communities argued the allocation of low-income housing tax credits in poor minority-concentrated communities led to residential segregation, thus violating the Fair Housing Act under disparate impact (Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc., 576 U.S. ___, 2015). The Fair Housing Act of 1968, enacted as Title VIII of the Civil Rights Act, protects individuals from discrimination when they are obtaining a mortgage, buying a home, or renting. Protected classes include race, color, national origin, religion, sex, disability and the presence of children. Disparate impact applies not just to intent but when practices are discriminatory in operation. Although returning citizens are not a protected class, blanket bans on individuals with criminal records are discriminatory since African Americans and Hispanics are disproportionately arrested, convicted, and imprisoned, as noted above.

Shortly after the Supreme Court ruling, PIH 2015–19 notice was issued on November 2, 2015. The purpose of this notice was to inform housing providers that their admission policies must comply with the Fair Housing Act. HUD reminded PHA that they no longer support one-strike policies that automatically deny applicants with criminal records. Discretion is given to housing agencies to consider the circumstances around an offense such as the seriousness, the tenant history of the individual, and the actions the individual has taken since the offense occurred such as participation in a rehabilitation program. Furthermore, the notice made it clear that arrest records could no longer be used to deny admission, only convictions. There must be a *preponderance of evidence* that a prospective applicant or current tenant is involved in criminal activity. An arrest record may prompt further investigation but cannot be used alone to make a tenancy decision. This includes further investigation of the offense with the use of police reports and witness statements, and consideration of whether formal charges were filed or dismissed, or resulted in an acquittal. After procedures and standards are consistently applied based on this information, if an applicant is denied admission, they must receive the reason in writing, and have the right to request a formal hearing. The notice also includes a list of best practices for housing agencies: consider conviction records only; analyze mitigating circumstances along with factors that

determine how safety/security for the property/residents is impacted; establish reasonable lookback periods (12 months for drug crimes and 24 months for violent crimes); consider the seriousness of the offense along with the number of convictions and length of time since the last offense; and establish pilot programs for the formerly incarcerated. PHA were instructed to comply with this notice by making revisions to their ACOP and admin plans (U.S. Department of Housing & Urban Development, 2015).

HUD reiterated this message on April 4, 2016, stating specifically that blanket bans on individuals with criminal records violate the Fair Housing Act. This guidance applies the disparate impact legal standard that was upheld in the Supreme Court case. Emphasis was placed on using convictions, not arrests, to make housing decisions, and even denials based on convictions have to be justified. All housing agencies, not just federally subsidized housing providers, were warned that an individual claiming suit only needs to show practices have a disparate impact on a protected class. Housing providers are responsible for providing "legally sufficient justification" from reliable evidence that proves adopted policies protect residents' safety and/or the property. They are required to demonstrate that their policies and practices differentiate between demonstrable risk to resident safety and/or the property and criminal behavior that does not pose a demonstrable risk to resident safety and/or the property (U.S. Department of Housing & Urban Development, 2016). PHA are now struggling to update and revise longstanding policies and procedures and comply with all of HUD's current guidelines. Although suggestions have been offered in HUD notices (U.S. Department of Housing & Urban Development, 2015, 2016) and documents published by organizations such as the Sargent Shriver National Center on Poverty Law (Tran-Leung, 2015) and the National Housing Law Project (2008), there is still uncertainty on the best policies and practices to provide second chances for returning citizens while maintaining the safety and security of residents and the property.

Use of Criminal Backgrounds in Housing Decisions

Whereas criminal history is commonly used to inform decision-making at a variety of stages within the criminal justice system, ranging from sentencing to community supervision practices, there is little research examining its use to inform housing admission policies and practices. Of the evidence available, there is limited empirical support for excluding individuals from housing opportunities based solely on their criminal backgrounds (Burt & Anderson, 2005; Clifasefi, Malone, & Collins, 2012; Malone, 2009; Tsai & Rosenheck, 2012). For example, evidence from an evaluation of a California housing initiative found even the most challenging residents (e.g., those with long criminal histories and extensive periods of homelessness) can be as successful as residents without criminal histories (Burt & Anderson, 2005). In a similar study, Malone (2009) examined the use of criminal history as a predictor of housing success amongst a sample of homeless adults with behavioral health disorders (mental illness and substance abuse) placed in supportive housing. Housing success in this study was defined as retaining supportive housing for a period of at least two years or transitioning to a stable housing situation. Results suggested individuals with extensive criminal histories, including those who committed more serious crimes and those who committed a crime more recently, succeeded at rates equivalent to those without criminal histories. It is assumed that study participants that succeeded in housing also avoided further involvement with the criminal justice system. This study emphasized that criminal backgrounds do not predict housing retention, and the only factors that predicted housing failure were younger participants and those with substance abuse problems (Malone, 2009).

More recent research confirms these findings, as Clifasefi and colleagues (2012) examined the relationship between criminal history and housing success among a sample of homeless ex-offenders with alcohol problems placed in a Housing First program. Again, this study concluded criminal history was not predictive of housing success and that individuals placed in the program had significant decreases in both bookings and total days spent in jail (Clifasefi et al., 2012). Additionally, Tsai and Rosenheck (2012) evaluated chronically homeless adults with an incarceration history and found no differences over a one year period in supportive housing outcomes between participants with no incarceration history and those who were incarcerated for one year or less, or more than one year. The only significant difference

identified was increased drug use amongst those incarcerated for more than 10 years compared with those with no incarceration history (Tsai & Rosenheck, 2012). In sum, the existing evidence points to the limited usefulness of criminal history as a predictive tool for housing success and suggests current use of criminal backgrounds may be unnecessarily restrictive.

Surprisingly, in the housing field, there is little research examining factors that predict a successful tenant, although there are many published resources for landlords regarding the tenant selection process. Screening checklists for finding suitable tenants include credit checks, rental history, employment, income verification, matching family size to the unit size, quality of references, community participation, and social media (Housing Opportunities Made Equal [HOME], 2016; Urban Homesteading Assistance Board [U-HAB], 2016; Zora, 2016). However, guidelines for screening checklist aspects are not supported by empirical research to determine which factors predict a good tenant. Furthermore, in many of the published resources for the screening process, little is mentioned about criminal backgrounds and nothing suggests that a criminal background implies the individual will be a bad tenant.

Given the lack of evidence supporting the use of criminal background checks in the rental application process, how willing are landlords to rent to individuals with criminal records? Helfgott (1997) surveyed property managers and found that about two thirds require criminal background checks in their rental application process, and approximately half of these landlords will reject prospective tenants with records. The reasons for rejection include trying to keep the property and current residents safe, not wanting criminals in their neighborhood, and the fear of being responsible for criminal behavior. Landlords were most worried about violent crimes, sex offenses, murder, drug offenses, any felony, domestic violence, arson, and property offenses (Helfgott, 1997). In a more recent study that surveyed landlords in Akron, Ohio, Clark (2007) found that criminal history is not the most important factor that landlords consider. Rental and eviction history, employment, income, and credit are some of the more pressing factors a landlord considers when reviewing a prospective applicant's packet. For criminal histories, landlords reported they would like to obtain some sort of proof of rehabilitation, whether that be in the form of a certificate or letter from an agency qualified to document reform (Clark, 2007).

Research on Recidivism: The (Limited) Utility of Criminal Records and the Importance of Risk and Protective Factors

Research on recidivism sheds light on the utility and limits of using criminal records for admission policies and procedures in assisted housing. This literature offers two paradoxical findings: prior criminal history is predictive of future criminal behavior, yet the risk of reoffending declines over time. Furthermore, recidivism studies have identified a range of individual risk and protective factors that influence the likelihood of recidivism among those with criminal records. In other words, ex-offenders are not uniformly at risk for recidivism. This section reviews rates of recidivism and trajectories of offending by crime type, the diminishing predictive power of criminal records over time, and the range of risk and protective factors that influence the likelihood of recidivism among those with a criminal record.

Examining basic recidivism rates among released prisoners calls into question the rehabilitative impact of incarceration. According to a Bureau of Justice Statistics (BJS) report on the five year recidivism rates of over 400,000 prisoners released in 30 states in 2005, rearrest appears to be fairly common, with 67.8% of prisoners rearrested within three years and 76.6% rearrested within five years (Durose, Cooper, & Snyder, 2014). The rates vary by crime type, with five year rates highest among property offenders (82.1%), followed by drug offenders (76.9%), public order offenders (73.6%), and violent offenders (71.3%). Lastly, recidivism rates also vary by gender, with higher five year recidivism rates reported among males (77.6%) compared with females (68.1%) (Durose, Cooper, & Snyder, 2014).

Whereas reports such as these suggest criminal desistance[1] is rare and highlight the potential utility of using criminal records for admission policies and procedures in assisted housing, a recent study by Rhodes and colleagues (2016) indicates that such rates exaggerate the likelihood of recidivism among released offenders. They point out that most recidivism rates, including those reported by BJS in the study cited above, are calculated using *event-based* samples. For example, the BJS report computed

recidivism rates based on rearrest in a released prisoner cohort (Durose et al., 2014). Such samples necessarily overrepresent high-risk offenders who repeatedly return to prison, and underrepresent low-risk offenders who never return to prison.[2] Using an offender-based sample with proportional representation of both low- and high-risk offenders, Rhodes and colleagues (2016) found that after 12 years of release, only 33% of individuals returned to prison compared with 53% of the event-based sample.

The Limits of Criminal History

Whereas recidivism rates provide some insight into the relationship between criminal history and future offending, considering offending trajectories over the life course suggests that criminal behavior may be less stable as one ages. In a landmark study examining trajectories of offending based on arrests among a prospective sample of delinquent boys followed to age 70, Sampson and Laub (2003) found that even for the most active offenders, crime declines with age. Property crime was most common type of crime committed by those in the study, followed by drug- and alcohol-related offenses, and then violent crimes. Trajectories varied by crime type, with property crime (which makes up a large proportion of crime overall) peaking in adolescence and sharply declining in the early twenties. Drug- and alcohol-related offenses, however, peak in the late teens and early twenties and do not experience sharp declines until the early forties. Violent crime peaks in the early to mid-twenties, and then declines more sporadically over time. Their findings led Sampson and Laub (2003, p. 301) to conclude that "desistance processes are at work even among active offenders." Indeed, the *event-based* recidivism rates reported in the aforementioned BJS report diminished over time (Durose et al., 2014). Approximately 57% of those rearrested within five years were actually arrested in their first year of release. The rate of rearrest among those individuals who were not arrested in their first two years declined to 20.5% in their third year postrelease. For those who were not arrested in four years, the rate of rearrest declined to 13.3%.

The use of criminal records to predict future offending, therefore, appears to have its limits. As Kurlychek and colleagues (2007) argue, "[s]imple distinctions between those who have an official offending record and those who do not appear to be quite inadequate as a basis for future criminal activity predictions" (p. 78). Fueled by questions surrounding the use of criminal history records in employment decisions, researchers have begun to examine the extent to which recidivism risk decreases as the length of time since the last offense increases (e.g., Kurlychek, Brame, & Bushway, 2006, 2007). Kurlychek and colleagues analyzed birth cohort data from Philadelphia (2006) and Racine (2007). Their findings across the two studies confirm that when criminal behavior is recent, there is an elevated risk for additional offending. The steepest declines in rearrest hazard rates occur in the first year. The more distant the criminal behavior, the less likely there is to be a substantive difference in the risk of new offenses relative to those without a criminal history. In fact, their findings led them to conclude: "if a person with a criminal record remains crime free for a period of about seven years, his or her risk of a new offense is similar to that of a person without any criminal record" (Kurlychek et al., 2007, p. 80).

Risk and Protective Factors for Recidivism

As noted above, the risk for recidivism among those with a criminal record varies considerably. For example, older individuals, those with less extensive criminal records (Yahner & Visher, 2008), and those without ongoing substance abuse issues are less likely to recidivate (Benedict, Huff-Corzine, & Corzine, 1998; Mumola & Karberg, 2006; National Research Council, 2007). Recidivism risk also declines with receipt of rehabilitation treatment (Lipsey, 1999; Lipsey & Cullen, 2007; Losel, 1995) and access to effective service providers (Hipp, Petersilia, & Turner, 2010). In addition, family ties, employment, and the neighborhood an individual returns to can impact the likelihood of recidivism.

Research links family ties and quality relationships with relatives to postrelease success. Returning citizens identify family support as a primary factor in deterring criminal behavior (Visher & Courtney, 2006). Family members are often the primary influence in a returning citizen's life (Malik-Kane & Visher, 2008) and function as a crucial support system (Braman, 2004; Shapiro & Schwartz, 2001). Family provides

emotional support, assists with reform, and has a substantial influence over behavior (Agnew, 2005; Laub & Sampson, 2003; Shapiro & Schwartz, 2001). Interpersonal relationships and positive engagement with family members and friends reduces the risk of violent behavior (Ullrich & Coid, 2011). Strong family ties and support can provide an optimistic future that leads to reduced criminal behavior and helps the reentering individual imagine themselves as a contribution to society (Maruna, 2001; Maruna & Toch, 2005). Social networks and family ties are also essential in the job search (Lin, 2001), with family ties positively correlated to employment. Berg and Huebner (2011), for example, found that strong family connections are linked to employment upon reentry. Family members often influence reentering individuals' employment decisions, provide employment connections, and vouch for the reentering individuals' character and reputation (Lin, 2001).

In addition to family support, returning citizens who find employment postrelease are less likely to recidivate (Berg & Huebner, 2011; Uggen, 1999; Yahner & Visher, 2008). Employment provides economic incentive, daily stability, and a sense of identity that reduces criminal behavior (Laub & Sampson, 2003; Petersilia & Rosenfeld, 2008). Laub and Sampson (2003) found that alcohol abuse and predatory crimes were less likely to occur among employed study participants. Research also identifies a link between employment and a reduction in property crimes (Horney, Osgood, & Marshall, 1995).

Research also indicates that an individual's risk for recidivism declines when they move out of neighborhoods where peers and the environment encourage criminal activity (Kirk, 2009, 2012). Individuals returning to society are often concentrated in neighborhoods that encourage criminal behavior (La Vigne, Mamalian, Travis, & Visher, 2003). In a study by the Urban Institute, one third of returning individuals in Chicago, Illinois, resided in only six different communities, which were some of the most distressed areas in Chicago (La Vigne et al., 2003). This is problematic given the fact that residential mobility has been found to encourage reform and deter criminal behavior by separating individuals from lawless peers and situations that encourage crime (Kirk, 2009, 2012; Laub & Sampson, 2003; Osborn, 1980; Yahner & Visher, 2008). In a study conducted in Portland, Oregon, Kubrin and Stewart (2006) found individuals returning to distressed neighborhoods engaged in more criminal activity than those returning to neighborhoods that are more affluent. The role neighborhoods play in reducing or encouraging recidivism emphasizes the importance of housing in the reentry process.

Using Research to Inform Housing Decisions

Given that criminal history alone does not guarantee recidivism, and that the risk of recidivism varies considerably across those with criminal records, questions remain regarding how criminal histories should be used in the selection criteria for rental housing occupancy. A criminal background check for rental housing is not required in the State of Texas and is used at the discretion of the landlord. Similarly, there are no requirements for the types of convictions a landlord should deny housing for, and no local laws for landlords and tenants. The Texas Property Code, Title 8—Landlord and Tenant, Chapter 92—Residential Tenancies outlines the requirements for landlords and property managers for rental properties. According to the code, prospective tenants must be provided with a landlord's tenant-selection criteria and a list of reasons why an applicant may be denied housing. Selection criteria may include (but do not require) an applicant's rental history, credit history, current income, and criminal background. Landlords can reject an applicant if any of these items is unfavorable; however, there are no requirements for items that must be included in the selection criteria, and no guidelines for denial. Landlords must apply the selection criteria and reasons for denial consistently for every applicant. If denied, the landlord must provide the reason why in writing to the tenant. If a landlord does not provide a reason why the tenant was rejected, they are entitled to a refund of their application fee.

This indicates that landlords in the private market can eliminate the criminal background check altogether, but public housing providers do not have the same flexibility. Since HUD has lifetime bans for individuals who have manufactured methamphetamine in federally assisted housing, and sex offenders who are subject to lifetime sex offender state registries, criminal backgrounds are required in the selection criteria in the housing admission process for PHA. Since criminal backgrounds are required, the

question remains: How can PHA use the existing research on recidivism to restructure their admission policies? The information below provides the following guidelines to address this challenge, based on existing literature reviewed above: understand recidivism rates, establish a useful lookback period, consider the risk and harm across crime types, verify substance abuse treatment and participation in other rehabilitative services, and consider the importance of other individual risk and protective factors.

When PHA revise their admission policies, they should be mindful of how recidivism rates are calculated when considering the risk of recidivism among applicants with criminal records. Recidivism rates calculated from event-based samples do not reflect the risk of recidivism for any given offender, as high-risk offenders disproportionately impact these rates. Further, many recidivism rates, such as those reported by the BJS, are based on those released from state prisons. Those convicted of less serious crimes and serving shorter sentences in jail or on probation are often not captured in such rates. This is important to consider, given varying levels of risk for recidivism amongst these populations.

PHA should consider several challenges when establishing a lookback period. First, research demonstrates that lookback periods in excess of seven years are unwarranted, as there is little difference in the risk of offending between those who have never been arrested and those whose last offense was seven years ago. Second, if the goal of a lookback period is to require an applicant to demonstrate law-abiding behavior, short lookback periods (i.e., one year) that are fully exhausted by the time one is released from prison make little sense. For example, a lookback period of one year since conviction will be complete upon release by virtually all individuals convicted of a felony and sentenced to prison. Therefore, no time is given to demonstrate law-abiding behavior. Third, the lookback period should serve as the maximum time frame considered by the PHA; applicants should not be automatically denied for a conviction within the lookback period. PHA should consider the factors discussed below for individuals with criminal records within the lookback period.

Crime types vary in terms of risk and harm. For example, based on offending trajectory research, applicants with a property crime conviction in their early teens or twenties, but no other recent offenses, likely pose little threat. Given that drug- and alcohol-related offenses do not decline as sharply with age as other crime types, those with recent convictions may need to demonstrate commitment to substance abuse treatment. Indeed, this is consistent with ongoing debates around the decriminalization of substance abuse and the need for a public health response, rather than a criminal justice response, to addiction issues. Considerations for how to address this issue are explained below.

Given the importance of treatment for recovery among those with addiction issues, PHA may want to create mechanisms to verify whether applicants are engaged in efficacious programming. Mitigating evidence that may be considered for those with drug- and alcohol-related offenses include a certificate of completion of a treatment program or letter of ongoing positive performance from the agency providing the treatment and/or the probation officer. Currently, only six states offer a formal Certificate of Rehabilitation (CR), with Texas not one of these. A formal state-adopted CR is vital because it rebuilds the status and rights that an individual with a criminal history loses (Schneider, 2010). In most states (where available), to obtain a CR, an individual must go to court and present several pieces of evidence: (a) they have had no criminal charges for a certain amount of time; (b) they have participated in rehabilitative programming and/or services; and/or (c) any other evidence that may support their rehabilitation (Schneider, 2010). Whereas most states largely used CR to support returning individuals in obtaining employment, they may also be used to obtain public housing (Schneider, 2010). Although Texas does not provide CR to returning citizens, PHA can consider similar factors in making housing decisions. For example, when individuals complete treatment services and programs (e.g., substance use, cognitive-behavioral therapy), they are frequently provided with a certificate of successful completion. While on probation/parole, individuals may receive certificates for participation in a range of activities (including treatment programs as well as work and employment training). Even further, individuals on probation/parole may also be able to provide letters of support from their supervising officer highlighting details such as their ability to stay crime-free and overall performance and compliance while under supervision. These resources may provide useful mitigating evidence for PHA to consider when making housing decisions.

In addition to participation in relevant treatment programs, PHA should consider the influence of various individual factors on recidivism risk. Existing research highlights the importance of family ties and employment. PHA may want to consider contacting applicant-provided references and/or collecting letters of support that demonstrate the applicant's character and commitment to reform. This could include employers, relatives, friends, priests, pastors, ministers, or others in the community who can attest to the overall character of the applicant. More broadly, as the literature discussed above reveals, the availability of safe, affordable housing that keeps families together can minimize the risk of recidivism. Thus, PHA may want to consider who the applicant would reside with and how admission may support and bolster familial ties and relationships.

Currently, a growing trend within criminal justice agencies is the adoption and implementation of risk and needs assessment instruments to classify offenders according to their likelihood of recidivism and identify areas of criminogenic needs (dynamic risk factors directly related to criminal behavior) (Andrews, Bonta, & Wormith, 2010). Practitioners then use these results to guide decision-making, including identification of appropriate supervision level and referral to appropriate programs, services, and treatments (Andrews et al., 2010). Whereas many criminal justice agencies are now using risk and needs assessments (e.g., Level of Service Inventory-Revised, Correctional Offender Management Profiling for Alternative Sanctions) to guide decision-making, these assessments may not be appropriate for housing authorities to use given potential unintended consequences. These include using results to justify the use of severe sanctions or stricter policy enforcement. For example, research finds individuals assessed as high risk are most in need of services and programming, yet criminal justice agencies are more likely to emphasize punishment and control with these populations, while focusing resources on low-risk offenders because of ease of supervision compared with more challenging, riskier offenders (Bonta, 2000; Wormith & Olver, 2002). Additionally, when it comes to housing decisions, individuals identified as low risk may not require housing assistance. Thus, whereas risk assessments are useful to guide criminal justice agencies in making classification, release, and supervision/programming decisions, they are not designed to measure housing success. As a result, the use of such an instrument to guide housing decisions may actually result in excluding individuals who have the potential to be successful in assisted housing programs and who may have the greatest need for housing.

The authors would be remiss if the contradictions across the points raised above were not addressed. For example, securing affordable housing upon release from prison removes a barrier to reentry and increases one's chances of reintegration. However, the risk of recidivism declines with time. Therefore, using a given lookback period (e.g., two years) reduces the likelihood of recidivism among applicants, as the highest risk offenders self-select out through reconviction. What remains unknown is what proportion of those convicted in the lookback period would have desisted from crime with the availability of affordable housing. These and other questions warrant further attention from researchers. Outlined below are future directions for research and policy.

Directions for Future Research and Policy

As PHA work to restructure their admissions policies, they should develop evaluation plans to monitor implementation and its impact on the policy goals so necessary changes can be made over time. Admission policies that are revisited periodically as more data on their effectiveness become available are more defensible. In addition, PHA should be mindful of potential unintended consequences and monitor relevant metrics to ensure that the range of outcomes associated with the policy changes are captured in an evaluation. Changes to admissions policies following the Fair Housing Act should aim to meet two primary goals: (a) eliminating discrimination in housing decisions; and (b) maintaining public safety for all residents. Any evaluation plan should address both by tracking how policy changes are actually implemented and the impact on relevant outcomes. These issues are outlined below with the types of data needed to evaluate the policy changes over time.

Whereas blanket one-strike policies violate the Fair Housing Act, PHA should recognize that the changes involving a more nuanced use of criminal background checks increase discretion and have

the potential to introduce extra-legal factors (e.g., race, gender) into decision-making. This is a theme in the criminal justice literature, as scholars and policymakers have grappled with the pros and cons of mandatory minimum sentences and other criminal justice policies meant to remove discretion (and thus eliminate the potential for discrimination) and policies that allow for discretion (and thus allow for the use of mitigating factors in decision-making). Any evaluation plan put in place will need to compare *similarly situated* applicants by race to ensure that individuals with comparable criminal backgrounds and mitigating factors receive similar treatment by the PHA.

Changes to admissions policies have the potential to impact public safety for other residents. PHA should compare complaints and property disturbances tracked by property managers to determine whether there is a higher rate of incidents among residents with criminal backgrounds. If higher rates are prevalent, additional evaluation can identify trends or patterns related to certain characteristics of criminal backgrounds (e.g., crime types, length of time since conviction, number of offenses) that directly correlate with the number and types of complaints. This can help guide future admission policy. If there is no relation to property disturbances and complaints among residents with and without criminal histories, this can serve as strong evidence for the PHA that the revised admission policies have not placed the property and residents at risk.

Furthermore, any evaluation plan should also monitor crime trends at the properties over time as the changes are implemented. Note that this differs from tracking whether a resident with a criminal record reoffends, as not all recidivism impacts the public safety of other residents. Shoplifting, for example, is unlikely to come to the attention of one's neighbors and influence their real or perceived safety. Further, even residents with no criminal record may partake in criminal behavior or have friends and family members who commit crimes at the property. Therefore, tracking the recidivism of individual residents with criminal records cannot determine whether extending affordable housing options to applicants with criminal records increases crime at those properties. Instead, property-level crime rates must be analyzed. If in fact crime at the properties increases following a change in policy, a series of additional questions remain. Is the increase caused by recidivism by residents with criminal records, or is there a less-direct mechanism by which the change in policy led to an increase in crime? For example, did the former one-strike policy serve as a general deterrent for all residents? Did prosocial families self-select out of these developments in response to the policy change, thus removing an important stabilizing component of the property? The authors do not anticipate the latter, given the high demand for assisted housing and the lack of affordable housing options and choices for low-income households.

To evaluate whether the two primary goals of the policy change are achieved, various data will need to be available for analysis. At the applicant level, the following data should be collected: demographic factors, including race, ethnicity, age, and gender; whether the applicant was accepted or denied housing; criminal history including extent, length of time since last conviction, and crime types; mitigating factors including employment, family support, participation in treatment programs, etc. Among those who received housing, how long have they remained housed? If they are no longer housed, why (e.g., lost subsidy because of a lease violation, incarcerated, left housing by choice by achieving self-sufficiency and no longer need assisted housing)? At the property level, calls for service to the police by crime type and crimes verified by law enforcement by crime type should be collected. Additional property-level information that could influence crime rates—including design, security, and management features—should also be considered so that the effects of the policy change on crime rates can be isolated. These data should be evaluated on an annual basis at minimum to help inform any admission policy recommendations made in PHA administrative plans, ACOP, and Moving to Work plans.

Although PHA are taking the guidance from HUD on moving away from blanket bans very seriously and are in the process of revising their admission policies, it is important to remember that this guidance applies to all housing, not just subsidized units. Furthermore, the private market provides housing for a large portion of low-income families and even subsidized households. The new guidance from HUD will have little impact if PHA are the only housing providers that comply. In addition, this can create discrepancies in the admission process. For example, a PHA may remove all blanket bans regarding the use of criminal histories for admissions in their Housing Choice Voucher Administrative

Plan, but if landlords who rent to voucher holders do not, the new policy changes become ineffective. Furthermore, although the landlord may be in violation of the Fair Housing Act if they continue with blanket bans, this may be difficult to uncover given that the private market is not under the same level of scrutiny as PHA, and a prospective applicant would have to file a Fair Housing complaint for this type of violation to be discovered.

It is recommended that once the PHA revises their admission policies, they share these policies with all of their partners (e.g., management companies of low-income housing tax credit developments, landlords who rent to voucher holders) and strongly encourage adoption of the same admission requirements. Although this may be more difficult to accomplish with Housing Choice Voucher landlords given the vast number that participate in the program, admission policies regarding the use of criminal histories can be added into the landlords' training and handbook. Standardizing polices among all housing providers is important to mitigate Fair Housing violations and provide second chances to returning citizens. The Housing Authority of New Orleans (HANO) has been recognized as a model agency for their newly revised criminal background screening policy. HANO adopted a two-step process in which an applicant's history is applied to a grid that assesses crimes and lookback periods that may prompt further review. If the conviction does not prompt further review, the applicant is considered eligible for the housing program. If further review is required (for instance manslaughter, armed robbery, or use of a firearm against a person prompts further review regardless of how long ago the incident occurred), the applicant can submit supporting documentation and attend a three-person panel review to make their case as to why they should be admitted to the housing program. At a minimum, the panel reviews all mitigating evidence the applicant provides, in addition to criminal history, rehabilitation efforts, community ties/support, and employment history (Housing Authority of New Orleans, 2016). One of the greatest challenges for HANO is convincing the private market (Housing Choice Voucher landlords and for-profit and nonprofit partners in mixed-finance communities) to adopt similar policies (Merrill, 2016). Aside from these challenges, the work of HANO provides evidence of how public housing providers can begin to move past blanket bans based on criminal history and take a leadership role to help guide the local private market to adopt similar changes.

In addition to the progress made in New Orleans, the New York City Housing Authority (NYCHA) and San Antonio Housing Authority (SAHA) both have pilot programs for returning citizens. Future data from both programs may help address some of the gaps in the literature on how criminal histories predict housing success. NYCHA's Family Reentry Pilot Program reunites returning citizens with families who live in assisted housing. The program is a collaboration between NYCHA, Vera Institute of Justice, several different corrections agencies, and reentry service providers. Findings suggest that the collaboration between these various agencies has provided critical support and assistant to participants to gain stable housing, reconnect with families, and accomplish other important goals associated with reentry (e.g., finding and maintaining employment and education) (Bae, diZerega, Kang-Brown, Shanahan, & Subramanian, 2016). Additionally, at the time of evaluation, none of the 85 participants had been convicted of a new charge. As a result of this evaluation, researchers recommend expanding eligibility requirements for returning citizens to increase the number of individuals eligible to apply (Bae et al., 2016). In attempt to alleviate the housing challenges faced by returning individuals, SAHA is also implementing a pilot program. The Restorative Housing Pilot Project will provide public housing assistance to 50 probationers with stark housing needs. The primary goal of this pilot project is to reduce recidivism among probationers by providing stable housing and support through case management services. This pilot project represents a unique collaboration between SAHA and the Bexar County Community Supervision and Corrections Department (CSCD) to address important criminal justice and housing outcomes that impact the local community and public safety (San Antonio Housing Authority, 2017). Despite the small sample sizes, both pilot programs take important steps to further assess how criminal histories relate to housing success.

Although balancing the need to keep current residents and property safe while providing returning citizens with second changes presents an enormous challenge to PHA, the elimination of the one-strike philosophy can have a substantial impact on life outcomes for individuals with criminal histories, and

their families. As pointed out previously, research has demonstrated a relationship between unstable housing and increased recidivism, rearrests, and treatment failure (Broner et al., 2009; Makarios et al., 2010; Meredith et al., 2007; Schram et al., 2006; Tillyer & Vose, 2011; Visher & Courtney, 2007; Watson et al., 2004). On the other hand, research has also confirmed that stable housing reduces recidivism, rates of hospitalizations, and time incarcerated (Burt & Anderson, 2005; Clifasefi et al., 2012; Culhane et al., 2002; Hamilton et al., 2015; Larimer et al., 2009). Taken together with evidence suggesting the limited usefulness of criminal history as a predictive tool for housing success (Burt & Anderson, 2005; Clifasefi et al., 2012; Malone, 2009; Tsai & Rosenheck, 2012), the existing evidence suggests stable housing is a key factor in the reentry process for returning citizens to successfully reintegrate into society. This is a vital argument PHA may acknowledge when faced with opposition or the need to defend their position on why it is imperative to eliminate one-strike policies and offer second chances.

Notes

1. Although criminologists have used this term in many ways, desistance in this article refers to "the process by which individuals stop offending" (Bushway & Paternoster, 2013, p. 213).
2. For the sake of example, imagine that 1,000 individuals receive a 6-month sentence *one or more times each* during a 10-year study period. Whereas 900 of those individuals are incarcerated a single time, 100 of those individuals are *reincarcerated* every year for 10 years (that is, they serve 10 sentences each). In any given prisoner-release cohort, therefore, we would expect to have approximately 90 low-risk offenders and 100 high-risk offenders. In other words, even though the high-risk offenders are only 10% of the overall offender sample, they make up 52.6% (100 of 190 prisoners) of a release cohort in any given year and have a disproportionate impact on recidivism rates.

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