



**Public Housing Policies Affecting Individuals with Criminal Records  
in Lowell, Massachusetts  
February 2001**

**I. Introduction**

The following memorandum summarizes the housing policies that affect individuals with criminal records in Lowell, Massachusetts. The federal housing laws give local housing authorities some discretion to establish local policies regarding the admission and eviction of people with histories of criminal activity. For a summary of the federal housing laws affecting individuals with criminal records, please refer to the Legal Action Center's summary entitled "Housing Laws Affecting Individuals with Criminal Convictions."

**II. Statutory Authority**

The Massachusetts regulations that define the eligibility requirements for public housing were promulgated under state law, MASS. ANN. LAWS ch. 121B, § 32 (2000). The Criminal History Systems Board, the entity responsible for maintaining criminal history information in Massachusetts, was also created by state law, MASS. ANN. LAWS ch. 6, § 168 (2000). The relevant state regulations are: MASS. REGS. CODE tit. 760, §§ 49.03; 53.03; 5.00; and 5.07 (2001); MASS. REGS. CODE tit. 803 §§ 5.03 and 5.05 (2001).

**III. Housing Authority Policy**

**A. Application for Public Housing**

When an individual applies for housing assistance from the Lowell Housing Authority (LHA), s/he is informed in writing that the criminal history of all applicants, household members, and authorized occupants aged 17 and older<sup>1</sup> will be obtained from the Criminal History Systems Board (CHSB).<sup>2</sup> In determining an applicant's eligibility for housing assistance, the LHA will consider any criminal history information, regardless of when the criminal activity occurred.<sup>3</sup>

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<sup>1</sup> Lowell Housing Authority (LHA) Criminal Offender Record Information Policy ("Policy") at 1.

<sup>2</sup> Policy at 2; MASS. REGS. CODE tit. 803 § 5.05(1).

<sup>3</sup> Conversation with Gary Wallace, LHA Caseworker, on March 1, 2001. This practice is authorized under

The LHA is permitted to consider information regarding convictions, as well as arrests or other information related to a pending criminal charge.<sup>4</sup> The LHA is authorized to review criminal history information from Massachusetts or any other jurisdiction.<sup>5</sup>

All applicants who have engaged in any criminal activity are initially denied housing.<sup>6</sup> This practice is consistent with state law, which authorizes housing authorities in Massachusetts to reject applicants if they have engaged in criminal activity that would threaten the rights of other public housing tenants if repeated.<sup>7</sup> Lowell does not, however, have a written policy which specifies which activity would pose a danger to other tenants.

State regulations also grant local housing authorities the power to disqualify applicants if a member of their household is a current user of a controlled substance.<sup>8</sup> A Lowell caseworker stated that the entire household with a current illegal drug user is denied housing.<sup>9</sup> Illegal drug use within the past year creates a presumption that the individual is a current illegal drug user.<sup>10</sup>

This presumption can be overcome by a “convincing showing” that the individual has permanently ceased all illegal use of drugs.<sup>11</sup>

The general practice of the LHA is to allow applicants who have been denied housing because of criminal activity the right to appeal the decision.<sup>12</sup> After the initial denial, the applicant can request a hearing on appeal.<sup>13</sup> The hearing will be conducted by the leasing director. The applicant may be represented by an attorney, and the housing authority is represented by a

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MASS. REGS. CODE tit. 803 § 5.03(1).

<sup>4</sup> MASS. ANN. LAWS ch. 6, § 168.

<sup>5</sup> MASS. REGS. CODE tit. 803 § 5.03(2).

<sup>6</sup> Conversation with Gary Wallace, LHA Caseworker, on April 23, 2001 (“Wallace conversation, April 23, 2001”).

<sup>7</sup> MASS. ANN. LAWS ch. 121B, § 32.

<sup>8</sup> MASS. REGS. CODE tit. 760 § 5.07(1)(j).

<sup>9</sup> Wallace conversation, April 23, 2001. Having a household member who is a current illegal drug user may also cause a family to be evicted from Lowell public housing. *Id.* For a discussion of the grounds for eviction, see below.

<sup>10</sup> MASS. REGS. CODE tit. 760 § 5.07(1)(j).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> Wallace conversation, April 23, 2001.

caseworker.<sup>14</sup>

State regulations set out mitigating circumstances an applicant can offer to demonstrate that s/he will not engage in similar activity in the future.<sup>15</sup> The Housing Authority is permitted to consider: the severity of the offense; the amount of time elapsed since the criminal conduct; the degree of danger to the safety of others or their property if the conduct recurred; and the likelihood that the behavior of the applicant will be improved in the future.<sup>16</sup> The LHA will consider evidence of mitigating circumstances during the appeal process.<sup>17</sup>

The LHA has taken steps to protect the confidentiality of applicants' criminal history information. Employees of the LHA who request criminal history information pertaining to applicants are required to sign a non-disclosure agreement.<sup>18</sup> The applicant's criminal record information is kept in a locked file cabinet when not in use.<sup>19</sup> Furthermore, an applicant's criminal record information is destroyed either: (i) when s/he is housed, or (ii) in the case of denial, three years after the rejection or after all judicial proceedings regarding the rejection are exhausted, whichever is later in time.<sup>20</sup>

The policy also allows the LHA to disclose criminal record information during an appeal or other administrative or judicial proceeding brought by an applicant.<sup>21</sup> All applicants for public housing are afforded the right to view their criminal record information at any time.<sup>22</sup>

## **B. Evictions from Public Housing**

Eviction policies and procedures are set out in the LHA's lease agreement, which all residents are required to sign.<sup>23</sup> The lease provides that any resident may be evicted if she or any member of her household or any person under her control engages in any of the following activities:

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<sup>14</sup> Id.

<sup>15</sup> MASS. REGS. CODE tit. 760 § 5.07(2).

<sup>16</sup> MASS. REGS. CODE tit. 760 § 5.07(2).

<sup>17</sup> Wallace conversation, April 23, 2001.

<sup>18</sup> Policy at 1.

<sup>19</sup> Id. at 1; MASS. REGS. CODE tit. 803 § 5.05(5).

<sup>20</sup> Policy at 1; MASS. REGS. CODE tit. 803 § 5.05(6).

<sup>21</sup> Policy at 1.

<sup>22</sup> MASS. REGS. CODE tit. 803 § 5.05(9).

<sup>23</sup> Wallace conversation, April 23, 2001.

- Criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants.<sup>24</sup>
- Drug-related criminal activity on or off the premises;<sup>25</sup>
- Abuse of alcohol which interferes with the health, safety, or right of peaceful enjoyment of other residents by abusing alcohol.<sup>26</sup>

The lease explicitly states that a criminal arrest, prosecution, or conviction is not necessary in order to sustain an eviction under any of the above mentioned grounds.<sup>27</sup>

If the LHA determines that an eviction is warranted, the LHA will invite the resident to participate in a private conference to discuss the grounds for termination of the lease.<sup>28</sup>

Twenty-four hours prior to the conference, the LHA must provide the tenant with a written statement including reasons for the termination and contact information for the nearest Legal Services office and local tenant’s organization representative.<sup>29</sup>

If the LHA decides to proceed with eviction after the private conference, the resident may request a grievance hearing, except where the LHA believes the resident or a member of the household: (i) has engaged in criminal conduct which seriously threatened the health or safety of another tenant or employee of LHA; (ii) has possessed or sold a controlled substance on LHA property; (iii) has illegally possessed a weapon on LHA property; (iv) has unlawfully caused or threatened serious physical harm to another tenant or LHA employee; or (v) has destroyed, vandalized or stolen property of another tenant.<sup>30</sup>

#### **IV. Opinions of Local Advocates**

The director of the Lowell Transitional Authority, a local homeless shelter, stated that her organization has successfully appealed a number of decisions by the LHA to deny public housing

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<sup>24</sup> LHA Lease (“Lease Agreement”) at 3 and 8.

<sup>25</sup> Id..

<sup>26</sup> Id at 8.

<sup>27</sup> Id at 3 and 8.

<sup>28</sup> Id. at 8.

<sup>29</sup> Id.

<sup>30</sup> Id. at 9. The Lease Agreement refers to MASS. ANN. LAWS ch.121B, § 32.

to individuals with criminal records.<sup>31</sup> In addition, a caseworker at House of Hope, another local housing shelter, stated that her organization has also successfully appealed many initial denials.<sup>32</sup> This advocate said that if an applicant can provide proof of rehabilitation or participation in treatment, and she does not have an open criminal case, the Housing Authority will grant her housing.<sup>33</sup> If the applicant is serving a probation sentence, the case is considered open and the application will likely be denied.<sup>34</sup> The advocate also said that, although there is an overall shortage of public housing in Lowell, people with criminal record or drug and alcohol histories are no more likely to be denied public housing than the general population.<sup>35</sup>

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<sup>31</sup> Conversation with Anne Marie Gavin, Lowell Transitional Authority Director, on March 23, 2001.

<sup>32</sup> Conversation with Vicki Fanning, House of Hope caseworker, on March 29, 2001.

<sup>33</sup> Id. Gary Wallace, the LHA caseworker, stated that an applicant must show “substantial participation” in treatment to gain housing. Wallace conversation, April 23, 2001. Mr. Wallace defined substantial participation in treatment as a serious time commitment. Id.

<sup>34</sup> Conversation with Vicki Fanning, House of Hope caseworker, on March 29, 2001.

<sup>35</sup> Id.