



**Public Housing Policies Affecting Individuals
with Criminal Records in New York City
February 2001**

I. Introduction

The following memorandum summarizes the housing policies that affect individuals with criminal records in New York City. 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."

The New York City Housing Authority ("NYCHA") consists of 346 public housing developments containing 181,000 units. Approximately 535,000 residents are housed in these units. NYCHA also houses 77,000 families in Section 8 private apartments.¹

II. Statutory Authority

The relevant statutes conferring authority upon NYCHA are contained in N.Y. PUB. HOUS. LAW § 400, et seq. While the statutes do not set out any admission or tenancy standards to which the local housing authority must adhere, NYCHA restricts certain individuals from public housing pursuant to federal law.

III. Housing Authority Policy

A. Application for Public Housing

Upon application, NYCHA checks the criminal history of everyone in the household who is 16 years of age or older. NYCHA reviews the records from the Office of Court Administration ("OCA"), which contain information about criminal proceedings ranging from arrests to convictions.

NYCHA has the discretion to deny housing to applicants who have been convicted of *any* criminal offense, including a violation. In general, people with criminal convictions must complete their sentences (including probation and/or parole and the payment of any fines) and then may be made

¹ See NYCHA's government webpage at <https://www.ci.nyc.ny.us/html/nycha.html>.

ineligible for public housing for two to six years, depending on the severity of their crimes.² Violent felonies are taken extremely seriously by NYCHA, as are any felonies, misdemeanors, violations, and infractions related to drugs or alcohol.³ In general, class A, B, or C violent *felonies* or *felonies* involving drugs or alcohol mandate a six-year period of ineligibility. Class D or E offenses of the same caliber result in a five-year period of ineligibility. People convicted of class A drug or alcohol *misdemeanors* are ineligible for four or five years, whereas those with class B or unclassified drug or alcohol *misdemeanors* are ineligible for three to four years. Finally, a drug or alcohol *violation* or *infraction* triggers a two- to three-year period of ineligibility.

Some discretion is accorded to NYCHA officials when they are “convinced that there is reasonable probability that the offender’s future conduct would not be likely to affect adversely the health, safety or welfare of other tenants, and would not be likely to affect adversely the physical environment or the financial stability of an Authority project.”⁴ If NYCHA believes the applicant does not pose any immediate danger to other tenants or to the Housing Authority project in general, NYCHA can consider the following factors to mitigate or waive periods of ineligibility: (1) the seriousness of the applicant’s offense; (2) the frequency of the offense; (3) when the offense occurred; (4) evidence about the conduct underlying the offense; (5) evidence about rehabilitation; and (6) evidence showing a willingness to participate in counseling or social service programs (and the availability of such programs).⁵

A. Evictions from Public Housing

The standards set out for admission also apply for eviction. NYCHA retains the power to evict any person convicted of any criminal offense, including a violation. NYCHA’s policy, “Termination of Tenancy Procedures,” outlines the possible reasons for termination and the procedure that is due to tenants in danger of termination. The relevant provisions for people who engage in criminal drug-related activity state that tenants can be terminated for “non-desirability” and breaches of NYCHA’s rules and regulations. “Non-desirability” describes tenants who engage in conduct or behavior that constitutes:

(1) a danger to the health and safety of the tenant’s neighbors; (2) “a sex or morals offense”, (3) a source of danger or a cause of damage to the employees, premises or property of the Authority; (4) “a source of danger to the peaceful occupation of other tenants;” or (5) a common law nuisance.

² A list of the violent felonies and drug and alcohol related offenses that New York investigates is attached as Exhibit “A.” A chart showing the ineligibility periods for these crimes is attached as Exhibit “B.”

³ Conversely, a list of crimes that are overlooked by NYCHA is attached as Exhibit “C.”

⁴ *Guidelines for the Applications Information Division (“AIO”) and McNair Hearing Officers When Considering Applicants Found Ineligible Because of Penal Offenses*, p. 2.

⁵ *Guidelines for AIO Staff and McNair Hearing Officers When Considering Applicants Found Ineligible Because of Penal Offenses*, p. 2.

If a tenant is found to be undesirable or in violation of NYCHA's rules and regulations, the project manager of the Housing Authority is responsible for interviewing the tenant about the alleged activity and assisting the tenant in obtaining outside help. If the project manager fails to assist the tenant, or feels that termination of tenancy is appropriate, s/he must submit the tenant's file to the Tenancy Administrator. If that person finds there is a basis for termination, she must refer the tenant file to the Authority's Law Department for the preparation of a Notice of Charges. The Law Department will prepare and issue the Notice of Charges, giving the tenant at least 15 days advance notice of a hearing with a Hearing Officer designated by the Authority, and requesting an answer to the charges and a confirmation that the tenant will attend the hearing. A hearing will then be conducted including the presentation of witnesses, oral and written evidence, and cross examination.⁶ The Hearing Officer must render a decision in a reasonable time period. The Authority has wide discretion in issuing judgments, including the power to condition occupancy on an agreement that a specific family member will be barred from the premises or that family members will participate in a drug or alcohol treatment program. If the Hearing Officer decides that eviction is the best course of action, the Housing Authority must issue a Notice to Vacate and then proceed in accordance with the rules of state court.

IV. Opinions of Local Advocates

Judith Goldiner, an attorney with the Legal Aid Society, confirmed that NYCHA will initiate eviction proceedings for very minor crimes. Generally, NYCHA either evicts the entire household or allows the family to stay (on a probationary period) as long as the perpetrator of the criminal activity is removed from the lease. She related the experience of one client who had been living in public housing for thirty years before she was caught with a marijuana cigarette across the street from the complex. With the assistance of legal representation, the woman was given probation and permitted to remain in NYCHA housing.

⁶ Judith Goldiner, an attorney with the Legal Aid Society, stated that both her office and Legal Services represent clients at these administrative hearings.